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1. The first part of the book is devoted to a general survey of the subject. It discusses the various methods of investigation and the results of the most recent researches. The author also gives a brief history of the science and its development.

2. The second part of the book is devoted to a detailed description of the various organs and systems of the body. It discusses the structure and function of each part and the diseases which affect them.

3. The third part of the book is devoted to a description of the various diseases and their treatment. It discusses the symptoms, signs, and pathology of each disease and the various methods of treatment which have been devised.

4. The fourth part of the book is devoted to a description of the various medical instruments and appliances which are used in the practice of medicine. It discusses the construction and use of each instrument and the various methods of applying them.

5. The fifth part of the book is devoted to a description of the various medical procedures and operations which are performed in the practice of medicine. It discusses the indications, contraindications, and results of each procedure and the various methods of performing them.

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ARTICLE

1. The several states, in order to secure the peace and tranquillity of the United States, and to establish a firm and permanent Union among them, do hereby agree to the following Articles of Confederation and Union.

ARTICLE

2. The states hereby agree to unite their strength and resources for the common defence and security of the United States, and to maintain a common and united front against all external threats.

3. The states hereby agree to maintain a common and united front against all external threats, and to support each other in the event of any attack or aggression against any one of them.

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ACCOUNT.

1. An account stated and acknowledged by the other party becomes a closed account, but it may be re-examined afterward by either party for the purpose of correcting errors or supplying omissions.

Poindexter and Pollard v. King, 697.

ACTION.

1. The vendee cannot maintain an action against the vendor to rescind the sale of imported goods on the ground that the duties had not been paid to the United States, when it is shown that the port was under the control of insurgents at the time.

Snodgrass v. Adams, 136.

2. An action will not lie to enforce a contract, the consideration of which is shown to be the price of the sale of slaves, nor will an action lie to compel the vendor to return the portion of the price paid before emancipation.

Wainwright v. Bridges, 19 An. 234.
Gosselin v. Womack and Thompson, 193.

3. Where a party, during the late war, placed a large amount of Confederate treasury notes in the hands of another as agent, to invest in the purchase of cotton, and the agent failed to give a correct and faithful account of the transactions to his principal, no action will lie to enforce a settlement of the dispute between the principal and agent.

Juillard v. Rogay, 259.

4. An action of slander will not lie for anything said by a witness in answer to questions propounded by either party in a judicial investigation.

Terry v. Fellows, 375.

5. The character which plaintiff gives to his action by his pleadings must govern in determining the prescription applicable to it.

Burch v. Willis, 492.

6. An action for damages founded on a tort is prescribed by one year.

Ib.

7. The allegations in a petition for injunction against an order of seizure and sale show, that the consideration of the debt for which the mortgage was given was Confederate notes, and that petitioner is the surviving partner of her deceased husband, and, as such, is entitled to one thousand dollars out of his estate by preference. Held—That the petition disclosed an interest in preventing the payment of this illegal debt, and therefore disclosed a cause of action.

Richard v. Beauchamp, 635.

ABSENTEE.

1. If the appellee reside in another State, citation is to be made on the advocate, not the agent or attorney in fact.

Parker v. Davis, 157.

2. A resident of New Orleans who, shortly after the Federal forces took possession of the city, in 1862, registered himself as an enemy of the United States, and left the Federal lines of military occupation for the insurrectionary districts, can not be viewed in the light of a person banished or forced away from his domicile against his will and without his consent.

Lasere v. Rochereau & Co., 205.

3. Where a party, while residing in New Orleans, executed a mortgage on his property here, and afterward, by his own voluntary act, leaves the State and remains away for nearly two years, having left no agent in charge of his property, or authorized to represent him, nor housekeeper in possession of his former residence, with no known intention of returning to the State at any future time, he must be regarded and treated by the mortgage creditor as an absentee, who, in a suit against the property mortgaged may cause a curator *ad hoc* to be appointed to represent the absentee, with whom proceedings may be conducted contradictorily, and the property seized and sold to satisfy the mortgage rights.

Ib.

4. Real property situated in Louisiana, owned by a French subject residing in France, can not be administered in the courts of France; such property thus situated forms a separate succession from that in France, and must be administered according to the laws of Louisiana.

Succession of de Roffignac, 364.

5. Heirs residing in France must be recognized as such by the courts of Louisiana before they can be put in possession of property situated in this State, which they have inherited from their ancestor in France.

Ib.

6. The appointment of an advocate to represent the absentee in an attachment suit may be made before service of citation.

Gillis & Ferguson v. Cuny, 462.

7. Citation of appeal must be served on the appellee if he reside in the State, and on the advocate if he be a non-resident. Service on the agent is not good.

McIntosh v. McLeod, 465.

8. If the widow and heirs of the deceased husband whose property is specially mortgaged, be non-residents, the mortgage creditor in a suit against the mortgaged property, may provoke the appointment of a curator *ad hoc* to represent them.

Randolph v. Chapman, 486.

ADMINISTRATORS.

SEE EXECUTORS AND ADMINISTRATORS.

AGENT AND AGENCY.

1. A mandatary who has communicated his authority to a person with whom he contracts in that capacity, is not answerable to the latter for anything done beyond it. *Barry v. Pike*, 221.
2. A mandatary is not responsible to those with whom he contracts only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers. *Ib.*
3. Where the evidence in the record leaves the question of fact in doubt as to whether the agent is personally responsible on a note which he has given, the case will be remanded for the purpose of receiving further testimony on the point. *Ib.*
4. A commercial firm having executed a power of attorney to their agent to draw bills of exchange upon them, and never having given the public notice of the revocation of the agency, cannot avoid the payment of bills drawn by the agent, on the ground of want of authority to draw the bill.
Caldwell & Shannon v. Neil Brothers, 342.
5. Where one of two parties must suffer, the loss must be borne by him who contributed to bring it about. *Ib.*
6. A settlement made by the agent before the revocation of the power of attorney is binding on the principal.
Harris v. Cuddy, Brown & Co., 388.
7. Where an agent holds a power of attorney by public act, the presumption is that the parties with whom he acts for and in behalf of his principals, have knowledge of his authority to represent them. *Ib.*
8. An agent of a foreign corporation domiciliated and doing business in this State, cannot invoke the inhibiting clauses of the Constitution of the United States against acts of the Legislature which it is alleged discriminate between the citizens of this State and those of the other States of the Union. *State v. Fosdick*, 434.
9. The agent or depositary of cotton destroyed during the late war cannot be held liable, where it is shown that it was destroyed by overpowering force. *Yale & Co. v. Oliver & Drake*, 454.
10. The mandate to execute a promissory note for another, must be both express and special.
Nalle & Co. v. Higginbotham, Administrator, 477.
11. The power is not required to be in writing, but express and special, as distinguished from implied and general. *Ib.*
12. An agent's right to compensation may be inferred from the nature of the services and the relations of the parties, without proof of an express agreement; yet to recover in such case the plaintiff must show some specific act performed in the capacity of mandatary before any implied contract for compensation can be established and form the basis of such recovery.

Wood v. McCranie, 557.

AGENT AND AGENCY—*Continued.*

13. Where the names of one of the parties to a contract has been signed by a person representing himself to the other as their agent, and the parties whose names have been thus signed specially deny the authority in a suit to enforce it, the burden of showing authority in the agent to sign the names of the principals, or a subsequent ratification by them, falls on the party who seeks to enforce the contract.

McCarty v. Straus and Baer & Straus, 592.

14. A suit to recover a contract of agency is prescribed by ten years.

Poindexter and Pollard v. King, 697.

15. When an agent, acting in the capacity of a commission merchant, has received produce on consignment, with instructions from the shipper to sell the same for gold, he cannot discharge his liability to the principal by accounting for the net proceeds in a depreciated currency of less value than that for which the property was sold, although that currency be a legal tender dollar for dollar.

Ib.

SEE ACTION—*Juillard v. Rogay*, 259.

SEE BELLIGERENTS—*Overby v. Overby*, 493.

SEE BILLS AND PROMISSORY NOTES—*Marks v. Wheelis*, 140.

SEE INJUNCTION—*Williams v. Douglass, Sheriff*, 468.

APPEAL.

1. Where an appeal has been taken from a judgment on a tableaux and opposition thereto, all the parties figuring on the tableaux must be made parties, otherwise the appeal will be dismissed for want of proper parties.
- Succession of McCausland*, 2.
2. To entitle a party to an appeal it must appear that the amount in controversy exceeds five hundred dollars. Constitution of 1868, art. 74. *Myers v. Mitchel*. 20 An. 533.
- State ex rel. Sternberg v. Lagarde*, 18.
3. The only question to be inquired into on appeal from an order of seizure and sale, is whether there was sufficient evidence before the Judge *a quo* to authorize the fiat.

Citizens' Bank v. Dixey, 32.

4. An order of seizure and sale can not be set aside on appeal on account of subsequent irregularities in the execution thereof. *Ib.*
5. The right of appeal is a constitutional right, and does not depend upon the discretion or pleasure of the District Judge. Const. art. 74. The right to determine primarily whether the appellant has complied with the requirement of the law is vested in the District Judge, but his decision is subject to the revision of the Supreme Court. The proper remedy for correcting the illegal rulings of the District Judge in dismissing the appeal or declaring it devolutive only, after a suspensive appeal has been granted or a bond has been filed, is by writ of *prohibition* and not by *mandamus*. *State ex rel. Johnson v. Judge Fifth District Court*, 113.

APPEAL—Continued.

6. No person not a party to the suit in the court below, can be made a party, appellee, in the appellate court. In such a case the appeal will be dismissed for want of proper parties.

Succession of Tyson, 117.

7. Where the certificate of the clerk shows that the record contains all the testimony adduced, documents filed and proceedings had, the appeal will not be dismissed because there is no bill of exceptions, statement of facts or assignment of errors. 20 An. 213; C. P. 601, 602.

State Bank v. Cammack, 133.

8. An appeal taken by the defendant must be prosecuted within the time fixed in the order.

Landry v. Landry, 142.

9. An appeal will not lie in favor of the intervening creditor after the time fixed by the order for the defendant to appeal has expired; in such a case the judgment becomes *res judicata*. *Ib.*

10. An appeal will lie from a judgment dissolving an injunction taken out against an order of seizure and sale. The amount of the appeal bond to entitle the plaintiff in injunction to a suspensive appeal is one-half over and above the amount of the judgment dissolving the injunction.

State ex rel. Stackhouse v. Judge of Fifth District Court, 152.

11. A suspensive appeal from a judgment dissolving an injunction against an order of seizure and sale will suspend the execution of the order until the judgment is affirmed by the Supreme Court.

Ib.

12. After a suspensive appeal has been granted and the bond is signed and filed the judge of the court *a qua* has no jurisdiction in the cause further than to ascertain that the security is good and solvent.

Ib.

13. The appeal from a judgment of the District Court involving the right of office, returnable before the Supreme Court in New Orleans, will be dismissed on motion, if the requirements of section 13 of the act of 1866, page 154, have not been observed, in not making the appeal returnable in ten days after the judgment of the lower court.

Ingram v. Doherty, 174.

14. A third party taking an appeal from a judgment homologating a tutor's account, must make all the parties who have an interest in maintaining the judgment parties to the appeal, otherwise the appeal will be dismissed.

Minors Smith v. Smith, Tutor, 183.

15. In a proceeding by mandamus, to recover possession of the books, papers and records of an office which he claims, the relator must show that he has an interest in their possession above five hundred dollars, to entitle him to an appeal from the judgment dismissing the rule.

State ex rel. Wrotnowski v. Bryan, 186.

16. An order for a suspensive and devolutive appeal may be granted by the judge *a quo*, separately, or both, in one order, and the ap-

APPEAL—Continued.

- pellant may in his discretion avail himself of the benefit of either order by giving the required bond within the time prescribed by law. *Funke, Adm., v. McVay, Tutor*, 192.
17. An appeal from a judgment annulling a seizure made under a writ of *fi. fa.* will be dismissed where the record does not show that the value of the rights seized is above five hundred dollars. *Docteur v. Tamboury*, 193.
18. Where the certificate of the clerk to the record of appeal is in due form and the amount of the appeal bond is sufficient to cover costs, the appeal will not be dismissed on motion of the appellee. *Nelson & Co. v. Scott*, 203.
19. All parties to the record interested in maintaining the judgment appealed from, must be made parties to the appeal, otherwise the appeal will be dismissed. *Dewey v. Bird, Sheriff*, 209.
20. When more than three judicial days have elapsed after the time fixed by the District Judge for filing the transcript, and no cause is shown for the delay, the appeal will be dismissed on motion of the appellee. *Cousin & Brother v. Johnson*, 210.
21. The appeal will be dismissed if the transcript is not filed in the Supreme Court within three judicial days after the time allowed the appellant to bring up the record. *New Orleans v. Merchants' Mutual Insurance Company*, 213.
22. An application by defendant to remove a cause is analogous to a plea to the jurisdiction, and when ordered by the court, the party against whom it is taken may appeal, but when the order of removal is refused, no irreparable injury follows, and it is unappealable. It will, however, be examined on the appeal taken by defendant from a final judgment on the merits, and if found erroneous will be corrected. *Rosenfield v. Adams Express Company*, 233.
23. Where citation of appeal is not prayed for by the appellant, and none is issued to the appellee, the appeal will be dismissed. *Adams v. Dermody*, 238.
24. No appeal lies from a judgment not signed by the judge. *Trost v. Fox and Weber*, 261.
25. To dispense with citation of appeal, the motion must be made in open court at the same term of the court at which the judgment is rendered. *De St. Romes v. Macarty*, 277.
26. Where a mandate has issued from the Supreme Court at the instance of one of the parties, to the clerk of the District Court, to amend his certificate, so as to conform to the fact, and show that all the evidence adduced on the trial is not contained in the record, and the clerk answers that he is not aware that other evidence than that embraced in the note of evidence and included in his certificate was offered, the appeal will not be dismissed. The appeal

APPEAL—Continued.

- will not be dismissed for want of citation where the appellee appears and urges other grounds for dismissal before that of want of citation. *Lee v. Goodrich, Tutor*, 278.
27. In a suit where the right of office is involved, the appeal will not be dismissed where the failure to file the record within the time prescribed by law is not imputable to the appellant. Sec. 12, acts of 1864, p. 22. *Fish v. Collens*, 289.
28. Where more than one year has elapsed from the date of the judgment of the court *a qua* before the judgment of the Supreme Court is rendered dismissing the appeal, the appellant will not be entitled to a second appeal, the time having expired within which he could appeal. C. P. 593. *Knox v. Duplantier*, 294.
29. A devolutive appeal from a final judgment does not suspend or interrupt prescription pending the appeal. Acts of 1853, p. 250. *Arrowsmith v. Durell*, 295.
30. Where the value of a schooner, the ownership of which is in dispute, is shown to be above five hundred dollars by the amount of the bond for injunction, and the amount of the appeal bond, the appeal will not be dismissed for want of jurisdiction. Constitution article 74. *Gogreve v. Windhorst*, 296.
31. Where the certificate of the clerk of the District Court shows that the transcript is incomplete and not such as will enable the appellate court to examine the case on its merits, the appeal will be dismissed on motion. *Ruleff v. Nugent*, 299.
32. The Supreme Court will *ex officio* notice the want of proper parties, and dismiss the appeal without motion. *Martin v. Taylor & Pinckard*, 303.
33. No appeal will lie from a judgment dissolving an injunction where the amount in dispute is not above five hundred dollars. The fact that the property seized exceeds five hundred dollars in value will not give the Supreme Court jurisdiction of the appeal from such judgment. *Gayarre v. Hays, Sheriff*, 307.
34. Where the appeal is taken in open court, citation of appeal to the appellee is unnecessary. *Fisk v. Moss*, 329.
35. A motion to dismiss the appeal for want of a proper bond will not be noticed by the Supreme Court, if not made within three judicial days from the filing of the record. *Ib.*
36. Where the transcript of appeal is duly certified by the clerk of the District Court as containing all the evidence, etc., adduced on the trial, it is sufficient to enable the Supreme Court to decide the case on its merits, and the appeal will not be dismissed. *State ex rel. Hero, v. Pitot*, 336.
37. The affidavit of the appellant that his interest in the controversy exceeds five hundred dollars is sufficient to give the Supreme Court jurisdiction of the appeal. *Ib.*

APPEAL—Continued.

38. Where the order of appeal has been granted on petition the appellee must be cited, otherwise the appeal will be dismissed on motion. *Marcy v. Citizens' Mu. Ins. Co.*, 429.
39. An appeal will not lie from an interlocutory judgment permitting a prayer for a jury to be filed and continuing the case, nor for sustaining a challenge to the array of jurors. If these orders have been improperly rendered they may be corrected on appeal from the final judgment.
State ex rel. McCarthy, v. Manning, 453.
40. Where the certificate of the clerk of the District Court to a transcript of appeal makes no mention of any testimony having been adduced, and there are no bills of exceptions or assignment of errors in the record, the appeal will be dismissed on motion.
Melson v. Sandel, 458.
41. Citation of appeal must be served on the appellee if he reside in the State, and on the advocate if he be a non-resident. Service on the agent is not good.
McIntosh, Adm., v. McLeod, Adm., 465.
42. The appeal will be dismissed if the bond has not been filed within twelve months from the date of the order. Every act required by law to perfect an appeal when taken, must be performed within the delay allowed by law for taking the appeal.
Wood v. Calloway, 481.
43. Where the creditors of a succession are litigating their rights contradictorily with each other and the value of the succession exceeds five hundred dollars, an appeal will lie to the Supreme Court, although the claim of each creditor may not amount to that sum.
Succession of Gale, 487.
44. Where the clerk of the District Court fails to reduce the testimony to writing and annex it to the record, in a suit founded on an opposition to an executor's account, the Supreme Court will remand the cause, with instructions to have the evidence reduced to writing.
Succession of Ross, 511.
45. When an appeal is taken from a judgment on a joint contract, all who were required to be made parties in the court below must be made parties to the appeal, otherwise the appeal will be dismissed.
Noble v. Logan, 515.
46. Where the order fixes the amount of the bond for a devolutive appeal, and the amount required by law for a suspensive appeal, and the bond given is for an amount less than that required by law for a suspensive appeal, the appeal will not be dismissed, but will be declared devolutive only.
Jenkins v. Howard, 597.
47. Where one judgment debtor *in solido* appeals from the judgment without making his co-debtor a party, the appeal will be dismissed for want of proper parties.
Broussard v. Guidry and Dupre, 618.

APPEAL—Continued.

48. The appeal will be dismissed where the failure to cite one of the appellees is imputable to the appellant. *Potier v. Thibodeau*, 618.
49. A third party, on appealing from a final judgment on the ground of his liability to contribute, must cite the plaintiff and defendant as appellees, otherwise the appeal will be dismissed for want of proper parties. *Guilbeau v. Cormier and Roy*, 629.
50. The fact that the name of the defendant is inserted in the appeal bond will not supply the defect. *Ib.*
51. The omission to ask for citation of the defendant in the appeal is imputable to the appellant. *Ib.*
52. An appeal from an interlocutory judgment will not be entertained, where it is not manifest that such decree would work irreparable injury. *Wolff v. McKinney*, 634.
53. Where judgment has been rendered in the lower court against the maker and indorser of a promissory note, and the maker appeals, he must make the indorser a party, otherwise the appeal will be dismissed for want of proper parties. *Sittig v. Littell*, 646.
54. The affidavit of the district judge, filed in the Supreme Court in 1867, stating that an appeal was granted in open court in 1862, is not sufficient to maintain the appeal in the absence of an order of appeal in the record. *Moore v. Simms*, 649.
55. An appeal will not be dismissed on the ground that the record was not filed on or before the return day, when it is shown that there was no term of the court held at the time fixed, provided it was filed on the first day of the first meeting of the court after the appeal was taken. *Lefevre v. Haydel*, 663.
56. On a motion to dismiss an appeal, the Supreme Court will not notice documents not forming a part of the record. *Nunez v. Winston*, 666.
57. A clerk of the District Court is not disqualified on account of his office from becoming surety on appeal bond, in an appeal from a judgment from the court of which he is clerk. *Walker v. Simon*, 669.
58. If the clerk commit a clerical error of importance in issuing citation to the appellee, its only effect would be to require time to be given for a correct citation. *Ib.*
59. The filing of a transcript of appeal on the first day of the meeting of the court after the appeal is taken is sufficient. A party does not lose his right of appeal because of failure of the Supreme Court to hold the next regular term after it is taken. *Ib.*
60. The several acts of the Legislature passed in 1864, 1865 and 1866, providing for the return of appeals to the Supreme Court, were enacted in the liberal spirit of reinstating the right of appeal in all cases in which it had been lost or suspended by the disorgani-

APPEAL—Continued.

zation of the courts and the utter confusion and derangement of judicial proceedings consequent upon a state of war. These statutes should be construed liberally.

Arceneaux v. de Benoit, 673.

61. Appeals granted since the first of September, 1860, and filed at the proper places of return, on or before the return day for such appeals, are in time, although the return be made subsequent to the first Monday of March, 1866, to which time the right of appeal had been extended by the act of December, 1865. The act of March 22, 1866, is, in its spirit, an extension of the time beyond the first Monday of March, 1866. *Ib.*

62. A third party, appealing from a judgment, must allege and show a direct pecuniary interest in the subject matter of the suit.

State ex rel. Belden, Att. Gen., v. Markey, Kaiser, et al., 743.

63. The City of New Orleans has no pecuniary interest in the subject matter of a suit brought under the intrusion act, No. 156 of 1868, to determine the rights of parties to seats as Aldermen and Assistant Aldermen of said city. *Ib.*

64. Objections to the reception of testimony on trial in the lower court will not be noticed in the appellate court, unless the objections are embodied in a bill of exceptions to the ruling of the judge admitting the evidence.

Burke & Co. v. Edey & Pinckard, 749.

65. When the appeal is taken for delay only, damages will be given against the appellant for frivolous appeal. *Ib.*

66. The appeal will be dismissed when the failure to make proper parties to the appeal is imputable to the appellant.

State ex rel. Freret v. Wickliffe, Auditor, 755.

SEE ABSENTEES—*Parker v. Davis*, 157.

SEE CRIM. LAW AND CRIM. PRO.—*State v. Redding*, 188.

SEE EXECUTORY PROCESS—*Taylor v. Hill*, 626.

APPEAL BOND.

1. The rule laid down in article 575 of the Code of Practice, which requires that the appeal bond to be given for a suspensive appeal shall exceed by one-half the amount of the judgment appealed from, does not apply to a case where an appeal has been taken from a judgment homologating a tableaux filed by the executor. This class of cases is governed by the doctrine taught in *Blanchin v. Steamer Fashion*, 10 An. 345; *State ex rel. Hickey v. Judge of the Fourth District Court of New Orleans*, 20 An. 108, which may be rendered as follows: Where there is no standard specially fixed by law as to the amount of the appeal bond required to operate a *supersedeas* pending the appeal, the judge *a quo* should allow a suspensive appeal on appellant's giving bond in an amount sufficient to cover costs.

State ex rel. Gausson v. Judge of Second District Court, 43.

APPEAL BOND—*Continued.*

2. After an appeal bond has been filed, the judge *a quo* is competent only to determine whether the appeal is suspensive or devolutive, and to ascertain whether the sureties on the bond are such as the law requires. *Ib.*
3. The Supreme Court will, on application for a prohibition, inquire into the sufficiency of the appeal bond to entitle the appellant to a suspensive appeal. *Ib.*
4. Where an appeal is granted on motion in open court, the names of the appellees must be inserted in the appeal bond, otherwise the appeal will be dismissed for want of proper parties.
Succession of Weigel, 149.
5. The Judge of the District Court is competent to determine the sufficiency of the security on appeal bond, after the appeal has been taken and filed in the Supreme Court, and if he finds the bond not such as the law requires, he may order execution to issue, notwithstanding the appeal.
State ex rel. Simonds v. Judge of Seventh District Court, 178.
6. An appeal bond is lawful and operative when signed by two or more sureties, who bind themselves each for a stated sum or portion of the bond, the aggregate amount of the respective sums being the full amount required by law.
State ex rel. Roman v. Judge of Sixth District Court, 443.
7. Under the charter, the city of Carrollton is dispensed from giving bond in case of appeal.
Carrollton v. Board of Metropolitan Police, 447.
8. An appeal bond is valid if each of the sureties bind himself for half the entire amount.
State ex rel. Mitchell, Craig & Co. v. Judge Sixth Dist. Court, 730.
9. The Supreme Court will examine into the validity and sufficiency of the security of the appeal bond on an application for a prohibition, and if the bond is legal in form, and the security good and solvent, the prohibition will issue pending the appeal. *Ib.*
10. The appeal bond must be made payable to the clerk of the court from which the appeal is taken. The appeal will be dismissed if the bond is not so taken. *Marks & Co. v. Herman, 756.*

ATTACHMENT.

1. In an attachment suit, no judgment can be rendered against the garnishee before judgment is obtained against the debtor.
Collins & Leake v. Friend—Yeatman, Garnishee, 7.
2. To entitle the creditor to the remedy by attachment against a resident debtor, it must be shown that he is about leaving the State permanently. *Schorten v. Davis and Brother, 173.*
3. The bonding of the property attached by the defendant is not an acknowledgment that the writ of attachment providently issued. *Avet & Cambon v. Albo, 349.*
4. The defendant in an attachment suit may have the attachment dissolved by a judgment of the court after he has come into the possession of the property attached, by giving bond for its release. *Ib.*

ATTORNEYS AND ATTORNEYS' FEES.

1. The stipulation in the act of mortgage of five per cent. to cover attorney's fees in case the holder is compelled to resort to legal proceedings to compel payment of the obligation, is not usurious.
Siegel v. Drumm, 8.
2. The attorney of record is not competent to make the necessary affidavit to obtain a trial by jury in a suit on a promissory note, where it is shown that the party resides in the parish and is within the limits of the parish at the time.
Wimbish v. Wade and Percy, 180.
3. The act of the Legislature of 1865 imposing a license tax on attorneys at law is equal and uniform on all persons engaged in the practice of the profession, and is therefore not in conflict with article 124 of the Constitution of 1864, nor with article 118 of the Constitution of 1868.
State v. King, 201.
4. The State, having authorized the issuing of a license to a party to practice law, is not thereby precluded from taxing such party annually for pursuing the profession within the State. *Ib.*
5. Where the authority of an attorney at law to appear in a cause is not questioned it will be presumed, and his acts will be binding on the party for whom he appears.
Rosenfield v. Adams Express Co., 233.
6. The instructions of the attorney of record, who placed the writ of *fi. fa.* in the hands of the sheriff, to retain it after the return day, will protect the sheriff from liability for failing to return the writ.
Simons v. Steamer White and Owners, 590.
7. The stipulation in an act of mortgage of two per cent. to cover attorney's fees, if resort be had to legal proceeding, is made in favor of the creditor, and is collectable with the principal debt.
Simon v. Haifeigh, 607.
8. In fixing the value of the services rendered by an attorney in a litigation in which he has been engaged, the court will not be governed exclusively by the estimate of the witnesses, but will look into the whole record and form an estimate founded on the usual charges made for such services as appear to have been rendered.
Cullom v. Mock, 687.
9. The averment in the petition that the defendants are non-residents is sufficient to authorize the appointment of an attorney to represent them in a proceeding *via executiva*. *Monition of Hall*, 692.
10. The court will notice judicially who are its attorneys, and where it appears that an attorney has been appointed *curator ad hoc*, the phrase *curator ad hoc* will be treated as surplusage and the appointment be regarded as that of attorney to represent the absentee. *Ib.*
11. The attorney appointed to represent the absentee in a proceeding *via executiva* is the proper party to whom notice of seizure must be addressed, and on whom service must be made. *Ib.*

ATTORNEY FOR ABSENT HEIRS.

1. The functions of the attorney for absent heirs ceases when the heirs present themselves, and are recognized and put into possession of the succession by order of the court.

Succession of McArthur, 432.

BAILMENT.

1. In order to avoid liability for the loss of cotton on storage, the warehouse keeper must show that the loss occurred without his fault. He cannot be relieved by showing that the loss occurred by an overpowering force. He must also show that he used all possible means to preserve it.

Schwartz, Kauffman & Co. v. Baer, 601.

2. A warehouse keeper gave a receipt to the depositor for cotton received on storage "with the stipulation in the receipt 'to be delivered in the same condition and order on presentation of this receipt or order.'" The depositor subsequently received a portion of the cotton, for which he gave a receipt. Held—That the presentation of the order and the delivery of a part of the cotton was a sufficient putting *in mora* of the whole amount to be delivered.

Juillard v. Baer, 603.

BANKRUPTCY.

1. A judgment and certificate of discharge by the Bankrupt Court will operate a perpetual bar to further proceedings in the State courts against the bankrupt, on demands that existed before the decree. Bankrupt act, sec. 34, approved March 4, 1867.

Fox v. Weed, 58.

2. An application for a new surrender of an insolvent is a new suit, and not a continuation of the first proceedings against the insolvent, and if not brought until after the passage of the bankrupt laws by the United States, cannot be entertained by the State courts.

Fisk v. Montgomery, 446.

3. The passage of the general bankrupt laws by the United States superseded all State insolvent laws.

Ib.

SEE EVIDENCE—*Marcelin v. His Creditors*, 423.

BELLIGERENTS.

1. The exchange of prisoners between the sovereign and the insurgent, engaged on the one side by force of arms to subdue the rebellion, and on the other to establish their independence, does not of itself constitute the insurgent a belligerent power.

Smith v. Stewart, 67.

2. The blockade of the insurgent ports by the sovereign does not constitute the insurgent a belligerent, within the sense and meaning of the term "belligerent," as used in international law, because the sovereign might accomplish the same result by interdicting commerce through those ports by municipal regulations.

Ib.

BELLIGERENTS—*Continued.*

3. The fact that a revolted province or portion of a country may have acquired the status and position of a belligerent power, does not *ipso facto* give it the position and status of a *de facto* government. A government *de facto* arises only where the established government has been subverted by successful rebellion, and the new government exercises undisputed sway for the time being over the entire country. *Ib.*
4. In the late conflict between the United States and the so-called Confederate States, before the Confederate States could have claimed the distinction of a *de facto* government, it was necessary for them to show undisputed control over the whole country claimed, with the ability to maintain that position. *Ib.*
5. A recognition, by any other independent power, of the Confederate States as an independent power before they had demonstrated their ability to maintain their new government, would have been a *casus belli* between the United States and such power. *Ib.*
6. Contracts entered into between belligerent enemies are absolutely null. *Overby v. Overby, 493.*
7. In the late civil war between the United States and the (so called) Confederate States, every individual within the military lines of the one, was a belligerent with reference to the other, and every contract between two parties, the one residing within the military lines of the United States and the other residing within the Confederate lines is absolutely null and void. *Ib.*
8. The contract of agency is included in the prohibitions established by acts of Congress and the proclamation of the President of the United States interdicting trade and intercourse between citizens of the United States and the insurgents, and is therefore void. *Ib.*
9. Contracts entered into during the late war between parties, the one residing within the military lines of the United States and the other within the Confederate lines of military occupation, are absolutely null, and no action will lie to enforce them. *Noblom v. Milborne, 641.*
10. A contract made between two parties, the one residing within the Federal lines of military occupation and the other within the so-called Confederate lines, during the late war, is prohibited by act of Congress, and is therefore null. *Noblom v. Swords, 647.*

BILLS AND PROMISSORY NOTES.

1. The holder of a promissory note, deposited before maturity, to secure the payment of a pre-existing debt, has a right to sue for and recover the whole amount. *Succession of Dolhonde, 3.*
2. A, a member of the commercial firm of A & B, executed his two promissory notes, payable to his own order and by him indorsed

BILLS AND PROMISSORY NOTES—*Continued.*

in blank, secured by mortgage on his individual property. A placed the notes in the hands of the commercial firm of A & B, who deposited them in pledge with C, to secure the payment of a note of the firm. The note of the firm was taken up by them, together with the mortgage notes held as collateral security; Held by the court—That the mortgage given to secure the notes of A, was not extinguished by confusion, they not having been returned into his hands. That the fact that they were returned into the hands of the firm of which A was a member did not place them in his individual hands, and the mortgage still exists. *Ib.*

3. The holder of negotiable paper must, in order to bind the indorser, give notice of non-payment by the maker in conformity with the rules prescribed by the law merchant.

Field & Co. v. Delta Newspaper Co., 24.

4. The doctrine on which the necessity of notice to the indorser rests, is the presumption of damage or injury sustained by him. *Ib.*
5. Whoever is entitled to a recourse over against another party, is presumed in law to be injured by a delay in receiving notice of non-payment. *Ib.*
6. An engagement by one party to pay a certain amount of money to another at a given time, secured by mortgage on real estate, falls under the class or denomination of promissory notes, and is prescribed by the lapse of five years from maturity.

Bank of La. v. Williams, 121.

7. Where the evidence shows that the drawer of a draft payable at a future day has notified the drawees not to pay it, he is not entitled to notice of dishonor. *Marx v. Wheelis, 140.*
8. One party cannot hold another liable individually, on a contract made with him as agent. *Ib.*
9. The transferee of drafts not negotiable occupies no better position than the original holder. *Ib.*
10. Where the signature of a party to a promissory note is specially denied under oath, the burden of proof falls upon the holder, who will be bound to produce such evidence as the law requires to enable him to recover on the instrument. C. P. art. 325.

Huddleston v. Coyle, 148.

11. In order to bind the drawer or indorser of a protested draft, notice must be directed to his postoffice. Notice sent to another post-office than that of his domicile will not avail.

Lafitte, Dufilhoe & Co. v. Perkins, 171.

12. Where a party has purchased a tract of land and executed his promissory note for the price, and afterwards takes up the note by giving his draft for the payment thereof, with full knowledge of the condition of his title, he cannot set up in defense to a suit against him as drawer of the draft that the title to the land is defective or imperfect.

Wimbish v. Wade and Percy, 180.

BILLS AND PROMISSORY NOTES—*Continued.*

13. The attorney of record is not competent to make the necessary affidavit to obtain a trial by jury, in a suit on a promissory note, where it is shown that the party resides in the parish, and is within the limits of the parish at the time. *Ib.*
14. Payment of a promissory note cannot be judicially enforced where the consideration is shown to be the price of a sale of slaves.
Lytle v. Whicher, 182.
15. Consent to the extension of the time for the maturity between the maker and holder of a promissory note will hold the indorser conditionally liable, and notice of demand on the maker need not be given the indorser until the expiration of the new date caused by the extension.
Walker v. Graham, 209.
16. Where a promissory note is made payable at a particular place, as a bank, in an action against the maker, it is not necessary to allege or prove that demand of payment was made at that place to enable the holder to recover. 5 An. 61. *Thiel v. Conrad*, 214.
17. The maker of the note may, however, when sued, set up in defense that he had deposited the funds in the bank to meet the note at maturity, and show the damages he has sustained by the failure of the holder to demand payment at the place designated. *Ib.*
18. Want of due diligence in making demand of the maker of a promissory note at maturity, will discharge the indorser.
Mitchell v. Young, 278.
19. A promise by the indorser to pay the note, made in ignorance of his discharge, will not bind him. *Ib.*
20. An executor or administrator cannot bind the estate he represents by making or indorsing a promissory note in that capacity, but he will be held personally responsible for the amount, and the holder is not bound to allege or prove that the executor exceeded his powers in order to hold him personally responsible on the note.
Livingston v. Gaussen, 286.
21. The holder of negotiable paper, made or indorsed by a party as executor, may institute his action against such party individually, leaving to the latter the right to show that he is not personally responsible. *Ib.*
22. Where a payment has been made on a promissory note which was given for the price of slaves, and a new note was executed for the balance due, the collection of the second note cannot be judicially enforced on account of the failure of consideration.
Campbell v. Waters, 325.
23. Notice to one member of a partnership which indorses a bill or note is notice to all, and if one of the firm dies before maturity, notice to the survivor will bind the estate of the deceased partner. *Parsons on Notes and Bills*, vol. 1, p. 502. Where a commercial partnership has been dissolved by the death of one of the partners,

BILLS AND PROMISSORY NOTES—*Continued.*

notice to the executor of the deceased partner will not bind the partnership on an indorsement of the firm name on a note made before the dissolution; in such a case notice should have been given to the surviving partner, especially if he be the liquidator or representative of the firm. *Slocomb v. De Lizardi*, 355.

24. The certificate of the notary that notice was given by a letter directed to the indorser's barkeeper, he not being in, is defective in not stating that the service was made at the indorser's residence or place of business. *Ib.*
25. A simple waiver of protest does not, as a general rule, dispense with demand and notice; but where a draft is made payable at a particular date, indorsed in blank by a commercial firm, and one of the firm writes on the back of it on the day of maturity, and only three or four hours before the usual time for protesting, "protest waived," he will be bound on the draft without further notice of its dishonor. *Marsh v. Waterman*, 375.
26. A waiver of protest and notice by an indorser, made at the place of payment, at the moment of maturity, will dispense with proof of other demand. *O'Leary v. Martin, Cobb & Co.*, 389.
27. Where a promissory note is indorsed in blank by a firm name, and a waiver of protest and notice is signed by the same firm, but in a different hand-writing from that of the original indorsement, and the note, indorsement and waiver are all offered and received in evidence without objection, the presumption is that the waiver was written by another member of the firm from that of the indorsement, and the signature will be considered proved. *Ib.*
28. Where the name of the holder of a promissory note appears as first indorser he will be presumed to be a surety with the maker. This presumption may however be rebutted by proof. *Ib.*
29. A party having given his promissory note for the price of land purchased, is debarred from setting up that the valuation of the land was estimated in a depreciated or unlawful currency. Nor can he set up that a previous holder was willing to take an unlawful currency in payment of the note. *Crosby v. Tucker*, 512.
30. A third holder of commercial paper before maturity is not compelled to prove that he gave a valid consideration to enable him to recover of the maker, unless it is shown that there is want or failure in the original consideration. *Union Bank v. Succession of Ross*, 513.
31. Notes given by the heirs for the price of slaves at probate sale can not be charged against them in the account rendered by the administrator. *Succession of Tausin*, 536.
32. Where the mail service can not be used as a means of conveying notice, the holder of commercial paper is not excused if he fails to use all other means within his reach of bringing home notice to the party whom he wishes to charge. *James & Co. v. Wade*, 548.

BILLS AND PROMISSORY NOTES—*Continued.*

33. To hold the indorser on a promise to pay a promissory note after discharge, the holder must show that the promise was made with a full knowledge of his discharge. *Ib.*
34. When the defendant, the maker of a promissory note, establishes a failure of consideration as between himself and his payee, amounting to a fraud, the holder by indorsement is obliged to show that either he or some preceding holder took it in good faith and for value. *Union Bank of La. v. Ryan*, 551.
35. A third holder of a promissory note, given for the price of a slave can not recover thereon, although he acquired the note in good faith, for a valid consideration, before maturity. *Groves v. Clark and Carnal*, 567.
36. A commercial firm holding a note in favor of one of its members without indorsement, given for money loaned by the firm, can not set up that they are innocent third holders for value against the plea of failure of consideration. *Norton & Macauley v. Pickens*, 575.
37. The law makes no distinction in regard to prescription, between negotiable and non-negotiable promissory notes and bills of exchange. *Robichaud v. Thorne*, 611.
38. A written order drawn by one person addressed to another directing him to pay to a third party a certain amount of money at a specified time, is a bill of exchange, and is prescribed by the lapse of five years from date of maturity. *Ib.*
39. A third holder of negotiable paper before maturity, in good faith for a valuable consideration, can recover thereon, unless it is shown affirmatively that the original consideration was illegal. *Coco v. Calliham*, 624.
40. A promissory note, given for Confederate money as the consideration, can not be enforced in part, predicated upon an assumed value of the illegal currency at the time, when compared with legal currency. *Ib.*
41. A note given by a conscript in the so-called Confederate army to another party, to serve in his place as substitute, is illegal, and no action lies to enforce it. *Heidenreich v. Leonard*, 628.
42. A third holder of a promissory note, given for the price of a slave, cannot recover thereon, although he acquired it in good faith, for a valid consideration, before maturity. *Levy v. Gremillion*, 635.
43. Payment of a promissory note cannot be enforced when the consideration is shown to be the procuring, by the holder, a detail for the maker to enable him to keep out of active military service in the rebellion. *Eastin v. Ducrest*, 656.
44. A written agreement to pay a certain amount of money to another, styled a bond, falls under the class or denomination of promissory notes, and is prescribed by the lapse of five years from maturity. *Succession of Voorhies*, 659.
45. Notes given for the price of slaves cannot be enforced. *Nunez v. Winston*, 666.

BILLS AND PROMISSORY NOTES—Continued.

46. The maker of a promissory note can not set up in defense to its payment that the holder is not the true owner, unless he show that the assignment or transfer is fictitious and fraudulent, and made to deprive him of substantial defense against the true owner. *Case, Receiver, v. Watson and Dunham, 731.*
47. Where a contract of sale of land, slaves and personal property was made for part cash and part credit, for which promissory notes were executed by the purchaser, due at different periods of time before emancipation, and a portion of the notes for the credit price have been paid, the purchaser of the property for which the notes were executed, is only bound to pay that portion of the outstanding notes after emancipation which is found to be due on the land and personal property, in the proportion of the value of the land, slaves and personal property in the original contract of sale. *Sandidge v. Sanderson, 757.*
48. The holder of a mixed obligation, the consideration of which is part land and part slaves, cannot recover that portion for which slaves formed the consideration. Constitution, art. 128. *Ib.*
SEE AGENT AND AGENCY—*Nalle v. Higginbotham, 477.*
SEE CONTRACTS—*Satterfield v. Spurlock, 771.*
SEE PRACTICE—*Taylor v. Littell, 665.*

BILLS OF CREDIT.

1. The certificates of indebtedness or notes authorized by the act of the General Assembly, approved ninth of February, 1866, are bills of credit, and are issued in violation of section 10, of article 1, of the Constitution of the United States.
City National Bank v. Mahan, Tax Collector, 751.
2. These certificates of indebtedness or bills of credit having been issued in violation of the prohibitions in the Constitution of the United States, are not receivable for taxes or other public dues to the State. *Ib.*
3. That the act of the General Assembly approved ninth of February, 1866, entitled "An Act to authorize the issue of certificates of indebtedness, and of bonds for the funding of the same," is in conflict with article 1, section 10, of the Constitution of the United States, and is therefore void. *Ib.*

BONDS.

1. The law of 1856, section 131, page 136, exempting the city of New Orleans from giving bond in litigations to which she is a party does not apply to the Treasurer or other officers of the city. The statute exempting the corporation from giving bond is an exceptional one and cannot be extended to other parties than those mentioned. *State ex rel. George v. Mount, City Treasurer, 177.*
SEE APPEAL BONDS.

CITATION.

1. Proof of citation can only be shown by the Sheriff's return, and nothing can be presumed by the court.

Leblanc & Co. v. Perroux, 26.

2. The Sheriff's return on a citation cannot be amended or corrected after judgment, so as to cure nullities resulting from a defective citation.

Ib.

3. The power to receive citation for another must be express and special; it cannot be conferred by a general mandate. C. C. 2965, 2966.

Ib.

4. When parties have elected a domicile as a place to receive citation, the Sheriff's return must show that the service was made at the elected domicile in the manner prescribed by law.

Ib.

5. The return of the Sheriff on a citation served at the domicile of the defendant must show that the citation and copy of petition were served on a person of lawful age who resided at the domicile of the defendant at the time.

Cole v. Hoeha, 613.

6. No valid judgment can be rendered against a party until he has been legally cited.

Ib.

7. A judgment by default that has been improperly made final because of defective citation, will be set aside on appeal, and the cause will be remanded.

Dupuy v. Arceneaux, 629.

8. A citation must express the number of days given the defendant to answer according to the distance from his residence to the place where the court is held, to be reckoned from the date of service.

Ib.

9. In a service of citation at domicile, the Sheriff's return must show that the defendant was absent at the time, and that the person with whom the citation was left, was living there.

Arnault v. Julien, 630.

10. No legal judgment can be rendered on a defective citation.

Ib.

CLERKS OF COURT.

1. Section 4 of the act of the Legislature, approved September 4, 1868, making the clerks of District Courts *ex officio* clerks of the Parish Courts, is in conflict with article 117 of the Constitution of 1868, which declares that "No person shall hold or exercise, at the same time, more than one office of trust or profit, except that of justice of the peace or notary public."

Bouanchaud v. D'Hebert, 138.

2. Section 9 of the same act conflicts with article 86 of the Constitution, which declares that the Parish Judges of the several parishes shall receive a salary and fees to be provided by law. The above numbered sections of the act No. 51, approved September 4, 1868, are unconstitutional and void. Constitution, articles 86 and 117.

Ib.

CLERKS OF COURT—*Continued.*

3. A clerk of the District Court is not disqualified on account of his office from becoming surety on an appeal bond in an appeal from a judgment from the court of which he is clerk.

Walker v. Simon, 669.

4. If the clerk commit a clerical error of importance in issuing citation to the appellee its only effect would be to require time to be given for a correct citation.

Ib.

COMMISSION MERCHANTS.

SEE AGENCY—*Poindexter v. King, 697.*

COMMON CARRIER.

1. Where a railroad company engaged in the carrying trade as common carriers for hire receives and receipts for property to be transported to another point on the line of the road, the burden of excusing its non-delivery at the point designated falls on the company.

Chapman v. Jackson Railroad Co., 224.

2. A common carrier is responsible to the shipper or consignee for the non-delivery of goods which has occurred through his fault or negligence.

Simon & Loeb v. The Fung Shuey, 363.

3. The omission of the consignee to institute proceedings to recover goods which have been stolen from the ship before delivery, will not relieve the carrier from the damages resulting from the failure to deliver.

Ib.

4. The estimate of damages for the loss of goods by the carrier is their net value at the port of destination.

Ib.

5. A steamboat engaged in carrying cattle and other live stock from different ports of the country to New Orleans, for market, is responsible for the loss of the cattle while on board, when it has occurred through carelessness or negligence.

Pitre v. Offut, 679.

6. It is no defense in case of loss while the stock is on board, for the boat to show a custom to the effect that they took no risk in case of losses of this kind. To make the defense good that such a custom prevailed, it must be shown that the shipper had full knowledge of the custom at the time of shipment, and that he delivered the stock on board with reference to the custom.

Ib.

COMMUNITY.

1. The surviving wife, being a partner in community, is competent to purchase property at probate sale, which she administers as executrix. Acts of 1855, page 78, section 8.

Keller v. Blanchard, 38.

2. The power of the husband to dispose of the community property is limited to that of alienation by sale or otherwise where an equivalent in value is impliedly received for the property disposed of.

Bister v. Menge, 216.

COMMUNITY—*Continued.*

3. The husband is prohibited from making any conveyance *inter vivos* of the immovables of the community by a gratuitous title. *Ib.*
4. At the dissolution of the community the wife is entitled to one-half of the immovables disposed of by the husband, by onerous titles in fraud of her rights, and she may enforce them directly against the parties in possession. *Ib.*
5. A lease by the husband of immovables belonging to the community for a term of years, in the form of a donation *inter vivos*, will fall if the donor dies before the expiration of the time. *Ib.*
6. The paraphernal property of the wife can not be seized for a debt due the community, growing out of improvements made upon her hereditary lands, until her indebtedness to the community is judicially established. *Abat v. Atkinson, 239.*
7. Where community property has been sold and the proceeds applied to the payment of community debts for which it was mortgaged, the minors can not claim restitution *in integrum* without showing injury from the sale, and paying or tendering the amount which has inured to their benefit. *Coulson v. Wells, 383.*
8. A sale of community property by the husband, after the death of the wife, only conveys title to one undivided half thereof. *Biossat, Tutor, v. Sullivan, 565.*
9. A decree of the court homologating the proceedings of a family meeting which authorized the adjudication of the community property to the surviving parent on the estimate of the inventory, amounts to a sale of the property to the survivor, and not a judgment for money on which execution could issue. *Heirs of Bedell v. Hayes, Tutrix, 643.*
10. The heirs of a deceased parent can not recover from the survivor, who has purchased the community interest of the deceased, that portion of the price which is shown to be for slaves belonging to their deceased parent. *Ib.*
11. The surviving husband having qualified as natural tutor to his minor children, and caused an inventory of the community property to be made, and on that basis caused the one-half interest of the wife in the community to be adjudicated to him, for which he executed a special mortgage in favor of the heirs on his own property, and he dies, and a dative tutor is appointed to represent his minor children; the dative tutor, thus appointed, may vote at the deliberations of the creditors to dispose of the property of the deceased, an insolvent. *Deblanc v. Gary, 689.*

CONFEDERATE TREASURY NOTES.

1. Contracts growing out of the use of Confederate Treasury notes as a medium of exchange cannot be judicially enforced. 19 An, 269, 288, 359; Constitution of 1868, article 127.

Barrow v. Pike, 14,

CONFEDERATE TREASURY NOTES—*Continued.*

2. Contracts or transactions, the basis of which was Confederate Treasury notes, cannot be judicially enforced by the courts of this State. 19 An. 161, 164, 186, 196, 269, 288, 359, 432, 464; Constitution of 1868, article 127.

Bank of West Tenn. v. Citizens' Bank of La., 18.

3. Payment to the administrator in Confederate Treasury notes of a debt due to the estate will not shield the debtor from liability.

Draughan v. White, 175.

4. A deposit in the Bank of New Orleans in 1862, in checks and drafts, drawn by the Union Bank of Nashville, and by citizens of Tennessee, during the time that Confederate Treasury notes were shown to be bankable funds in New Orleans and Nashville, must be considered as having been made in such funds.

Foster & McAllister v. Bank of N. O., 338.

5. A depositor of funds in Confederate Treasury notes, while such notes were shown to be bankable funds, cannot recover, from the bank in money, the amount so deposited. *Ib.*

6. Where a party purchased checks drawn by one bank on another, and drafts drawn by one party on another, all within the Confederate lines at the time, and paid for them in Confederate Treasury notes, he must be considered as *particeps criminis* in giving credit to that currency, and is without the capacity to obtain the enforcement of any contract or obligation growing out of such transactions. *Ib.*

7. Courts of justice will not lend their aid to settle disputes growing out of contracts reprobated by law. *Boyd v. Chaffe*, 476.

8. The enforcement of contracts by the courts of this State, the consideration of which was Confederate notes, is prohibited. *Ib.*

9. Payment of a legacy to a minor in Confederate notes is not binding on the legatee for the reason of incapacity to give consent.

Porter v. Brown and Chaler, 532.

10. An agreement to sell, where the consideration is shown to be Confederate Treasury notes, will not be enforced.

Biossat, Tutor v. Sullivan, 565.

11. Where the evidence shows that a lot of sugar has been sold, and a portion of the price agreed upon has been paid in Confederate notes, no action will lie to enforce payment of the balance of the alleged price. *Fournet v. Beer*, 658.

SEE ACTION—*Juillard v. Royay*, 259.

“ BILLS AND PROMISSORY NOTES—*Coco v. Callihan*, 624.

“ EXECUTORS AND ADMINISTRATORS—*Succession of Sprowel*, 544.

“ PARTNERSHIP—*Succession of Wilder*, 371.

CONFEDERATE OBLIGATIONS.

1. Two parties, A and B, were engaged as partners in the cotton trade, one residing within the Federal lines of military occupation and the other in the Confederate lines, during the late war, between whom all trade was interdicted. They engaged the services of C to haul the cotton through the lines. Held—That, C could not recover wages, on the ground that he was engaged in illicit traffic, expressly prohibited by law.

Williams v. Gay, 110.

2. All contracts and transactions between parties in aid of the Confederate struggle in the late conflict between the United States and the so-called Confederate States, are contrary to good morals and public policy, and can not be judicially enforced. In all such cases the parties engaged will be left where their conduct has placed them.

Haney v. Manning, 166.

3. Where the consideration of a promissory note, secured by a mortgage on real estate, is shown to be Confederate treasury notes the holder can not enforce the mortgage rights against the property mortgaged, nor recover on the note.

Seuzeneau v. Saloy and Sheriff, 305.

4. Abat, Generes & Co., commission merchants in the city of New Orleans, received, in 1862, of Anatole Cousin, a customer of theirs, the sum of \$16,715 in notes of the so-called Confederate States, to be invested in city bonds and notes secured by mortgage. The notes were invested in bonds of the city, known as Defense Bonds, which were redeemable in the same kind of currency. Cousin brings suit for the amount delivered. Held—That the entire transaction, being in Confederate notes, was illegal and null. 19 An. 161, 288, 359; Constitution of 1868, article 127.

Cousin v. Abat, Generes & Co., 705.

5. The organization known as the Confederate States never reached the dignity of a *de facto* government. *Ib.*
6. The order of Major General Butler compelling the holders of City Defense Bonds to pay a certain per cent. thereof for the benefit of the poor of New Orleans, was punitive, and no action lies to recover the amount of such assessment. *Ib.*

SEE PARTNERSHIP—*McWilliams v. Bryan & Irvine*, 211.

CONSTITUTION.

1. The constitution of the State of Louisiana adopted in 1864 was provisional in its character, and the legislation had under it partook of the same nature.

Police Jury v. Heirs of Burthe, 325.

2. The convention that formed the constitution of 1868 was competent to annul or continue in force any of the provisions of the constitution of 1864, or the laws passed thereunder. *Ib.*

CONSTITUTION—*Continued.*

3. The act of the Legislature of 1855, authorizing the imposition of a license tax of one thousand dollars on each insurer or insurance company chartered by the State, and only imposes a license tax of five hundred dollars on each insurance company chartered by the laws of the State, is not in conflict with that provision of the constitution which requires that taxation shall be equal and uniform. *State v. Fosdick*, 434.
4. An agent of a foreign corporation domiciliated and doing business in this State cannot invoke the inhibiting clauses of the constitution of the United States against acts of the Legislature which it is alleged discriminate between citizens of this State and those of the other States of the Union. *Ib.*
5. Article 128 of the State constitution of 1868, in declaring that "contracts for the sale of persons are null and void, and shall not be enforced by the courts of this State," does not impair the obligations of a contract. It merely prohibits the execution of contracts that have been declared void by the sovereign power. *Armstrong v. Lecomte*, 527.
5. A third holder of negotiable paper before maturity is not excepted from the prohibition. *Ib.*
6. The prohibition against the enactment of laws impairing the obligations of contracts has no application to the sovereign power. *Ib.*
7. Courts will not declare an act of the Legislature void unless its unconstitutionality is established beyond all reasonable doubt. *Edwards v. Dupuy*, 694.
8. The act of the Legislature of 1869, No. 110, entitled "An Act to amend and re-enact sections four and nine of an act entitled an act to organize the parish courts of this State," etc., is constitutional. See *Hawley v. Barlow*, 563. *Ib.*
9. The act of the General Assembly, approved ninth of February, 1866, entitled "An Act to authorize the issue of certificates of indebtedness, and of bonds for the funding of the same," is in conflict with article 1, section 10, of the constitution of the United States, and is therefore void.

City National Bank v. Mahan, Tax Collector, 751.

SEE CRIMINAL LAW AND CRIMINAL PROCEEDINGS—*State v. Jackson*, 574.

CONSTRUCTION, RULES OF.

1. The term "each house" used in articles 33 and 42 of the Constitution of 1868, means a majority of the members elected to either body. *Frellsen v. Mahan*, 79.
2. Four-fifths of a *quorum* of each house may dispense with the rule requiring any bill to be read on three several days. *Ib.*
3. In ascertaining the meaning of a statute, the rule is well settled, that it should be so construed, if possible, that no clause, sentence, or word, shall be superfluous or insignificant.

Staes v. Gastinel, 407.

SEE LAWS—*Arrowsmith v. Durell*, 295.

CONTRACTS.

1. Solidarity is never presumed ; it exists, if at all, when several persons bind themselves towards another for the same sum, at the same time and in the same contract.
Stowers v. Succession of Blackburn, 127.
2. A lumber dealer cannot recover from the proprietor, who is having a building erected under contract, the price of lumber which he has furnished to the builder, unless he shows that the proprietor is indebted to the builder.
Heuchert v. Barrere, 387.
3. Courts of justice will not extend relief to a party against his own contract without exacting strict justice from him to his adversary.
Latham v. Hickey, 425.
4. A contract that can not be enforced against the principal for want of a lawful cause, can not be enforced against the vendee of the principal.
Boyd v. Chaffe, 476.
5. Courts of justice will not lend their aid to settle disputes growing out of contracts reprobated by law.
Ib.
6. The enforcement of contracts by the courts of this State, the consideration of which was Confederate notes, is prohibited.
Ib.
7. Delivery is of the essence of a contract of deposit, and where cotton was to be weighed, no delivery could take place until it was weighed.
Tanneret v. Marshall, 619.
8. Where the evidence shows that a sum was paid in Confederate notes for a lot of cotton, no action will lie to enforce the contract for the recovery of the cotton or its value.
Ib.
9. A conversation between one party to a contract and a third party, out of the presence of the other party, is inadmissible on a trial in a suit to enforce the contract.
Bethel v. Hawkins, 620.
10. Where a sale of land and slaves was made before emancipation, and notes were executed for the price, and the purchaser afterwards reconveys or retrocedes to the vendor a portion of the slaves at a fixed price, and a credit is given to the purchaser on a particular obligation of his, given to the vendor as a part of the price of the sale, the vendor is bound by the act, although emancipation had taken place before it was passed. The vendor, having agreed to and accepted the retrocession, can not afterwards invoke its immorality and nullity to avoid its effect.
Satterfield v. Spurlock, 771.
11. In a suit to enforce a contract founded on a mixed consideration, part land and part slaves, if the evidence fails to show what portion is for land and what for slaves, the case will be remanded for the purpose of ascertaining by evidence the relative proportions of each.
Ib.
SEE ACTION—*Gosslin v. Womack*, 193.
SEE BELLIGERENTS—*Overby v. Overby*, 493.
SEE BELLIGERENTS—*Noblom v. Melborne*, 641.
SEE BELLIGERENTS—*Noblom v. Swords*, 647.
SEE BILLS AND PROMISSORY NOTES—*Sandidge v. Sanderson*, 757
SEE SOVEREIGN POWER—*Dranguet v. Rost*, 538.

CORPORATIONS.

1. Paragraph 12 of section 7 of the charter of the city of Jefferson (Laws of 1867, No. 57), requires that all contracts for opening, widening, paving and improving the streets, authorized by the Common Council shall be adjudicated by the Controller, under regulations prescribed by the Council, *to the lowest bidder*. An adjudication by direction of the Council, by the Controller, of a contract for paving one of the streets of the city with the *Nicolson pavement* to a firm or company having the exclusive right to make such pavement within the limits of the State of Louisiana is in conflict with this provision of the statute; and the owners of property fronting on the street paved with this kind of pavement by a company having the exclusive right, cannot be compelled to pay the two-thirds of the cost of making the pavement.

Bennett v. City of Jefferson, 143.

2. The principle of competition enunciated by the statute must be observed by the Council in letting out contracts for the improvement of the streets, otherwise the owners of property fronting on the streets improved cannot be compelled to pay the charges assessed against them for making the improvement. *Ib.*
3. The omission in the Constitution of 1868 of article 133 of the Constitution of 1864, left the whole subject of the corporation of the the city of New Orleans and its police regulations under the power and discretion of the Legislature.

Diamond v. Cain, 309.

4. Act No. 1, approved July 9, 1868, creating a Board of Police Commissioners for the city of New Orleans and giving them full power to remove and appoint the police force, and repealing all other acts and parts of acts in conflict with its provisions, divested the Mayor of the city of New Orleans of all authority to appoint a chief or other policeman. Articles 159 and 42 of the Constitution of 1868 were not violated in the passage of this act. (See acts Nos. 74 and 145 of 1868, and Nos. 60 and 92 of 1869. *Ib.*)
5. The appointment of a chief of police by the Mayor of the city of New Orleans after the passage of act No. 1, approved on the ninth of July, 1868, was without any legal force or effect, and such officer so appointed had, by virtue of his appointment, no interest in the office of chief of police, nor in the office of superintendent of metropolitan police created by act No. 74, approved September 14, 1868. Having no interest in the office, he was not entitled to the writ of *quo warranto* nor injunction. *Ib.*
6. The Common Council of the city of New Orleans have no power to fill vacancies in offices of the corporation arising from death, resignation or otherwise. In such cases it is made the duty of the Governor to appoint for the unexpired term.

State ex rel. Belden, Atty Gen., v. Leovy, 538.

7. The city of Shreveport has no control over the public ferries across the Red river beyond the limits of the corporation.

O'Neil v. Police Jury, 586.

CRIMINAL LAW AND CRIMINAL PROCEEDINGS.

1. In providing against the crime of arson, our statute makes no distinction in reference to the ownership of the house or building destroyed by fire, whether belonging to the accused or to a third person. And the only object of the allegation of ownership of property in the indictment is to describe and identify the object of the crime. *State v. Elder, 157.*
2. The possession, occupancy and control of a house or barn and stable that has been destroyed by fire, may be shown by parol evidence in the prosecution of a party charged with the crime of arson. *Ib.*
3. Under the statute of 1855, page 137, providing against the crime of arson, the State will be allowed to amend the bill of indictment in all matters relating to the form thereof. *Ib.*
4. After the jury was empaneled and the trial commenced, the District Attorney moved to amend the indictment by inserting the words "the aforesaid barn and stable being," which was allowed by the court. Held—That this amendment does not alter the substance of the indictment, or create a new or different charge. *Ib.*
5. In a criminal case, not capital, where a fine above three hundred dollars has not been imposed, the appeal will be dismissed for want of jurisdiction. Constitution, art. 74. *State v. Redding, 188.*
6. Where one of the panel of the grand jury is disqualified, any indictment found by them is null and void, and the accused may raise the objection and show the fact after verdict. *State v. Parks, 251.*
7. A party convicted by a jury, on the information of the District Attorney, of the crime of larceny, cannot urge in arrest of judgment that the charge of burglary is not properly set out in the information. *State v. O'Brien, 265.*
8. In criminal cases the Supreme Court has jurisdiction on questions of law only. Constitution, art. 74. Questions of continuance, and the grounds of the motion to quash, depending solely on facts, cannot be examined on appeal. *State v. Watkins and Nelson, 290.*
9. In capital cases, jurors are not permitted to separate after they have been sworn. *State v. Evans, 321.*
10. A verdict of guilty of a capital offense will be set aside, and a new trial ordered where the jury have separated after they were sworn and before verdict. *Ib.*
11. In cases not capital the jury may be allowed to separate at the discretion of the judge before verdict. *Ib.*
12. The bill of indictment under the seventh section of the act of the Legislature, approved March 14, 1855, must charge the accused with two specific acts, the concurrence of which, in point of time, creates a capital offense. *State v. Brown, 347.*

CRIMINAL LAW AND CRIMINAL PROCEEDINGS—*Continued.*

13. Where the indictment under this statute fails to set out the two distinct offenses which constitute the crime against which it is aimed, but sufficiently describes the offense of burglary, and a verdict of guilty of a capital offense has been returned by the jury, and sentence is pronounced thereon by the court, the case will be remanded for sentence in accordance with the formalities prescribed against the crime of burglary. *Ib.*
14. The bill of indictment for the crime of embezzlement must designate the thing embezzled. Charging the accused with the embezzlement of the sum of eleven dollars is insufficient to hold the prisoner. *State v. Muston, 442.*
15. Declarations or threats of the deceased towards the accused, in order to constitute a part of the *res gestæ*, must be made at the time of the act done which they are supposed to characterize, and so to harmonize with it as to constitute one transaction. *State v. Gregor, 473.*
16. Declarations by the deceased to a witness, towards the accused, made before the homicide and not communicated to the accused, do not form a part of the *res gestæ*, and are therefore inadmissible on that ground. *Ib.*
17. Declarations or threats made to third parties by the deceased towards the accused before the homicide, are not admissible without first showing that they were communicated to the accused before the killing. *Ib.*
18. The order of the District Judge overruling a motion for a new trial in a criminal case on the affidavit of newly discovered evidence, presents the question of diligence, and not an unmixed question of law, and cannot be reviewed on appeal. *Ib.*
19. Where two parties are tried together for the crime of murder, each one is entitled to twelve peremptory challenges to the jurors. In such a case the privilege of the one must not be prejudiced by the acts of the other. *State v. McLean and Hamilton, 546.*
20. The objection that one of the petit jurors was not a registered voter, comes too late if not made until after verdict. *Ib.*
21. The statute of the State of Louisiana of 1855, authorizing prosecutions by the District Attorney on information, is not in conflict with the fifth amendment to the constitution of the United States, which declares "that no person shall be held to answer for a capital or other infamous crime, unless on a presentment or indictment by a grand jury." The restriction by this amendment to the constitution of the United States has no application to the State courts. *State v. Jackson and Smith, 574.*
22. An order of the judge authorizing the sheriff to discharge the prisoner on giving bond in a fixed amount, is a sufficient authority to the sheriff to receive the bond and file it in court, and the

CRIMINAL LAW AND CRIMINAL PROCEEDINGS—*Continued.*

- sureties on the bond having obtained the prisoner's release, on this construction, are debarred from setting up this defense in a suit for the forfeiture of the bond. *State v. Loeb*, 599.
23. The condition in a bond of release "that the prisoner shall not depart without leave of the court," will bind the sureties, although the offense is not accurately described in the body of the bond. *Ib.*
24. All objections to the informalities which may have occurred in the formation, drawing or summoning of the grand jury must be made on the first day of the term of the court and not afterwards. *State v. Hoffpauer*, 609.
25. Where the venire from which the grand jury is drawn is composed of legally qualified jurymen, it will not be set aside on objections made after the first day of the term. *Ib.*

CURATOR AD HOC.

1. Where a party, while residing in New Orleans, executed a mortgage on his property there, and afterwards, by his own voluntary act, leaves the State, and remains away for nearly two years, having left no agent in charge of his property, or authorized to represent him, nor housekeeper in possession of his former residence, with no known intention of returning to the State at any future time, he must be regarded and treated by the mortgage creditor as an absentee, who, in a suit against the property mortgaged may cause a curator *ad hoc* to be appointed to represent the absentee, with whom proceedings may be conducted contradictorily, and the property seized and sold to satisfy the mortgage rights. *Lasere v. Rochereau & Co.*, 205.

DAMAGES.

1. Damages will not be allowed for frivolous appeal unless prayed for in the answer to the appeal. *Siegel v. Drumm*, 8.
2. Where the appeal is manifestly taken for delay the judgment appealed from will be affirmed with damages for frivolous appeal. *Williams v. Woodman*, 50.
3. In an action for damages for slander where the verdict of the jury is manifestly contrary to law and the evidence, the Supreme Court will not undertake to assess the damages, but will remand the case for a new trial. *Coussirat v. Olivier*, 50.
4. Where damages are claimed on a reconventional demand, the evidence must fix the amount with certainty and clearness. *Lallande v. Ball*, 185.
5. Damages will be adjudged against the appellant for frivolous appeal when the record shows no grounds for a reversal of the judgment, and it is manifest the appeal was taken for delay. *Friedman & Co. v. Houghton*, 200.

DAMAGES—Continued.

6. A newspaper is not liable in damages for libel in publishing the testimony of witnesses given before an investigating committee of the Congress of the United States. In giving publicity to such evidence through the newspapers the privilege of the press is not abused. *Terry v. Fellows*, 375.
7. Where the appellant fails to appear and prosecute the appeal, and the record discloses no grounds of appeal, damages will be awarded the appellee as for frivolous appeal.
Piper v. Succession of Pickens, 386.
8. Co-trespassers are liable *in solido*, and citation of one will interrupt prescription as to all. In an action in damages for trespass, the defendant is not permitted to attack plaintiff's title, or establish title in himself. *Frazier v. Hardee*, 541.
9. Damages will be allowed the appellee when prayed for, if the record shows no legal ground for taking the appeal.
Ewing v. Root, 683.
10. An allegation of damages, unsupported by evidence on trial in the court below, will not be considered in estimating the amount in controversy necessary to give the appellate court jurisdiction.
Pritchard v. Parker, 745.

DEDICATION TO PUBLIC USE.

1. In the dedication of lands for the public use, no particular form need be observed; all that is required is the assent of the owner of the land, and the fact of its being used for the public purposes intended by the appropriation.
Baton Rouge v. Bird, Sheriff, 244.
2. Where a dedication to public use of lands in squares, designated by metes and bounds is shown, and private individuals acquire the lands adjoining and surrounding it, with reference to the boundaries thereof, the lands so dedicated for the public use are out of commerce, and are not subject to individual or private ownership. *Ib.*

DE FACTO GOVERNMENT.

SEE BELLIGERENTS—*Smith v. Stewart*, 67.

SEE CONFEDERATE OBLIGATIONS—*Cousin v. Abat, Generes & Co.*, 705.

DISTRICT COURTS OF NEW ORLEANS.

1. Under the act of the General Assembly, No. 16, approved February 5, 1869, the District Courts of the parish of Orleans, except the First and Second District Courts, are required to be kept open on all legal days, except from Christmas to the second of January, from the first Monday of November until the fourth day of July; and for the purpose of considering writs of arrest, habeas corpus,

DISTRICT COURTS OF NEW ORLEANS—*Continued.*

mandamus, etc., they are required to remain open on all legal days during the whole year; and any judgment rendered on mandamus or other conservatory proceeding, out of term time, may be appealed from on motion in open court, the same as though it had been rendered in regular term.

State ex rel. New Orleans v. Judge Sixth District Court, 733.

DISTRICT JUDGE.

1. Whenever the Judge of the District Court is personally interested in the suit, he shall call upon the parish judge of the parish where the suit is pending to try the case. Constitution of 1868, art. 90.
State ex rel. Welsh v. Judge Ninth Judicial District, 51.
2. The District Judge has no discretion in granting a suspensive appeal, where the appellant tenders his bond with legal surety for an amount exceeding by one-half the amount of the judgment.
State ex rel. Adams v. Judge Second Judicial District, 64.
3. The Judge of the District Court is competent to determine the sufficiency of the security on an appeal bond, after the appeal has been taken and filed in the Supreme Court, and if he finds the bond not such as the law requires he may order execution to issue, notwithstanding the appeal.
State ex rel. Simonds v. Judge Seventh District Court, 178.
4. In a dispute about the ownership of a schooner, the opinion of the judge *a quo* on the questions of fact is entitled to great weight, when sustained by the testimony offered and in the record, without objection from the opposing party.
Gogreve v. Windhorst, 296.
5. The District Judge is without authority, either on his own motion or by the consent of parties, to transfer a suit from the parish of the domicile of the defendant to another parish of the State. All proceedings had in a cause after such transfer are null.
State ex rel. Twichell v. Head, 550.

DOMICILE.

1. A party cannot be sued at any other domicile or before any other court than the one having jurisdiction over the place of his residence.
State, ex rel. Sandlin, v. Judge of Eleventh Judicial District, 258.
2. By the provisions of the act of the Legislature, approved April 19, 1861, No. 173, any party, defendant, is prohibited from electing any other domicile than that of his residence for the purpose of being sued. Acts of 1861, 137. *Ib.*

DONATION.

1. A donation which acknowledges an indebtedness to the heir, but declares that it is given as an extra portion and not to be accounted for at the partition of the donor's estate, is presumed to be fraudulent. C. C. p. 1975. *Chase v. McCay*, 196.

DONATION—Continued.

2. A judgment creditor can have a donation *inter vivos* made by his debtor in fraud of his rights annulled, and have the property donated made liable for his debt, provided the donor fail to show other immovable property, unincumbered, to an amount sufficient to pay the debt. *Ib.*

EMANCIPATION.

- SEE ACTION—*Gosselin v. Womack*, 193.
 SEE BILLS AND PROMISSORY NOTES—*Sandidge v. Sanderson*, 757.
 SEE CONTRACTS—*Satterfield v. Spurlock*, 771.
 SEE SUCCESSIONS—*Succession of Patin*, 661.

EVICITION.

1. A purchaser of real estate can not postpone the payment of the price until the decision of a suit for eviction, when the nature of the title on which the suit for eviction is founded is set out and described in the act of sale. *Boisblanc v. Markey*, 721.

EVIDENCE.

1. The opinions of medical men are received upon questions of professional skill; but they should state the facts on which such opinions are based, and the opinions themselves are not conclusive, but must be weighed as other evidence. *Chandler v. Barrett*, 58.
2. A party will not be permitted to prove what he has not alleged in his petition. *Duflhoo & Co. v. Perkins*, 171.
3. A receipt given for money is not conclusive, and may be explained by parol testimony. *Draughan v. White*, 175.
4. The interruption of prescription may be proved by parol testimony. *Bernstein v. Ricks*, 179.
5. Where the evidence leaves it in doubt whether the parties engaged in cotton transactions during the late war did not fall within the prohibitions of trade and intercourse placed on citizens by the United States, the case will be remanded to give both parties an opportunity of offering evidence on the point. *Pratt v. Draughon*, 194.
6. In a suit on a promissory note which expresses on its face "for value received," the burden of showing want or failure of consideration falls on the defendant. *Friedman & Co. v. Houghton*, 200.
7. A settlement of business transactions between parties by one giving his note for the balance due, will be conclusive where the proof in the record shows that no error occurred in the settlement. *Douglass v. Manning*, 231.
8. The fact of non-delivery of goods shipped must be shown before the owner or shipper can recover their value from the carrier. *Schneideau & Co. v. Pennington & Glidden*, 299.

EVIDENCE—Continued.

9. In an action in damages for slander, the burden falls on the plaintiff of showing that the language complained of was used by the defendant, and with malicious intent. *Toye v. McMahon*, 308.
10. Credits on the back of a promissory note, to be evidence against the maker, must be shown to have been placed there with his knowledge and consent. *Boulin v. Rainey*, 335.
11. Evidence will not be admitted to establish a fact not alleged in the pleadings. *Caldwell & Shannon v. Neil Brothers*, 342.
12. Parol evidence is inadmissible to prove any acknowledgment or promise of a party deceased to pay any debt or liability against his succession. *Succession of Hillebrandt*, 359.
13. Evidence is not admissible to establish a special defense under the general issue. *Marsh v. Waterman*, 377.
14. A paper purporting to be a bill of lading, not signed by the captain or clerk of the boat, or any one authorized to sign the same, is not admissible in evidence in a suit for the recovery of damages from the insurance company where loss has occurred by the destruction of the steamer. In such a case the document was inadmissible until proved by competent testimony.
Pendery & Naylor v. Crescent Mu. Ins. Co., 410.
15. The evidence of the captain of the vessel as to the contents of a manifest, and the copy of the manifest are inadmissible until the loss of the original manifest is shown by evidence. *Ib.*
16. Testimony taken by commission in another State of the Union is inadmissible in the courts of this State unless the record of the testimony shows the authority of the commissioner who executed the commission. *Ib.*
17. The allegation and testimony of a purchaser of goods of an overcharge by the vendor is not entitled to much weight when made for the first time after suit is brought, nor is the testimony of the purchaser admissible to show that other merchants would have made a larger discount than that allowed by the seller.
Morris, Tasker & Co. v. Fleming, 411.
18. In a controversy about the title to real estate which is attacked on the ground of simulation, any title, on its face translativ of the property, is admissible as rebutting testimony against the charge.
Simmons v. Norwood, Sheriff, 421, and
Marcelin v. His Creditors, 424.
19. In an opposition to the account filed by the syndic of an insolvent, the record of a suit between the syndic and a third party is not admissible to prove that the opponent is not the owner of the notes on which the opposition is founded; nor is the brief of counsel for the insolvent, in other proceedings, admissible on the trial of the opposition of the account of the syndic.
Marcelin v. His Creditors, 423.

EVIDENCE—Continued.

20. A white man is allowed, by the laws of Louisiana, to acknowledge his natural children by a woman of color. Such acknowledgment must, however, be made before a notary public, in the presence of two witnesses. None but authentic evidence of the acknowledgment is admissible to establish the fact.
Casanave, Admr., v. Bingaman, 435.
21. The affidavit of a party, received without objection, showing that a letter book has been lost, which contains the correspondence between the defendants and their agent or depository, is sufficient to authorize the introduction of secondary evidence to prove their contents.
Yale & Co. v. Oliver & Drake, 454.
22. In a suit by the creditors against the executor to remove him from office, evidence offered by the executor, impugning the motives of the attorneys who bring the suit, is irrelevant to the matters at issue, and is not admissible.
Rogers v. Morrison, Ex., 455.
23. The denial, under oath, of a signature to a promissory note, can only be overcome by one of the three kinds of proof required by article 325 of the Code of Practice. *Succession of Leonard, 523.*
24. A receipt given for money received is not conclusive between the parties, and may be contradicted or explained by parol testimony.
Porter v. Brown and Chaler, 532.
25. Parol evidence is not admissible to establish an agency to sell land.
Mumford v. McKinney, 547.
26. Evidence to establish title is not admissible in a possessory action.
Lott v. Mills and Sheriff, 559.
27. A receipt given for money paid is not conclusive between the parties, and may be contradicted or explained by evidence, but when the evidence offered is contradictory, and that offered on one side entitled to as much weight as the other, the receipt will stand.
Borden v. Hope, 581.
28. A copy of a deed of trust and the assignment thereof which is kept in a public office of any State, not appertaining to a court, is admissible in evidence in the courts of this State, on being properly attested by the keeper of such records, without showing the loss of the original. Act of Congress of March 27, 1804.
Graham & Anderson v. Williams, 594.
29. By a statute of Mississippi, approved March 13, 1837, copies taken from the record of all instruments in writing may be received in evidence, and when so received they have the same effect as though the original were produced.
Ib.
30. When a statute of another State has once been recognized as law in that State, by a decision of the courts of this State, the courts of Louisiana will thereafter take judicial cognizance of the statute, and until it be proved that the law has been changed, will presume it still exists.
Ib.

EVIDENCE—Continued.

31. A depository cannot be permitted to introduce evidence to impeach the title of the depositor. *Ib.*
32. The burden of showing the incapacity of a judge to act as such falls on the party who alleges such incapacity.
Simon v. Haifeigh, Sheriff, 607.
33. Negotiable notes, which are identified with the notarial act of mortgage given to secure their payment, make full proof of themselves. *Ib.*
34. The ambiguity in the testimony of a witness will be so construed as to harmonize with the view taken of it by the court *a qua*.
Campbell, Adm'r, v. Thibodeaux, 628.
35. In a suit to revive a judgment it is incumbent on the party claiming to be owner to establish the existence of the judgment and his ownership thereof. A copy certified from the mortgage office, without showing the loss of the original, is not sufficient to establish the existence of the original judgment.
Drogre v. Moreau, 639.
36. A possessor of property under an authentic act is not bound to establish the verity of the sale where it is attached by a creditor on the ground of simulation. *Sellers v. Sellers, 647.*
37. The burden of showing simulation falls on the party attaching, when the purchaser is in possession. *Ib.*
38. The holder of a promissory note cannot be permitted to prove by interrogatories propounded to the husband, in a suit against the wife, that the note sued on was signed by him as her agent.
Robichaux v. Bouillet, 681.
39. Parol evidence is inadmissible to prove a service of citation or copy of petition. *Gliddon v. Goos, 682.*
40. Evidence is not admissible to establish facts set up in an exception filed after issue has been joined by the filing of an answer.
Case, Receiver, v. Watson and Dunham, 731.
41. In a suit to enforce a written notarial contract of sale, the certificate of marriage is admissible to show that the vendor is a married woman, and where the notarial act is alleged to have been procured by fraudulent and deceptive practices, its declarations may be contradicted by parol testimony. *Willis v. Kern, 749.*
42. The husband can not be a witness for or against his wife in a litigation to which she is a party. Acts of 1867, p. 269. *Ib.*
43. The dying declarations of a party who acted as interpreter for the vendor at the passage of a notarial act of sale, are not admissible in evidence on the trial of a suit to enforce the contract.

*Ib.*SEE AGENT AND AGENCY—*McCarty v. Straus, 592.*SEE CONTRACTS—*Bethel v. Hawkins, 620.*

EXECUTORS AND ADMINISTRATORS.

1. An executor or administrator is an officer of the court, and the funds coming into his hands as such are amply secured by the bonds he is required to give before entering upon the duties of his office.
State ex rel. Gausson, Executrix, v. Judge Second Dist Court, 43.
2. An executor or administrator cannot bind the estate he represents by making or indorsing a promissory note in that capacity, but he will be held personally responsible for the amount, and the holder is not bound to allege or prove that the executor exceeded his powers in order to hold him personally responsible on the note.
Livingston v. Gausson, Adm'r, 286.
3. In homologating a tableau of distribution the judge can only order the executor to distribute the funds in his hands. He cannot order him to pay a particular fund to a creditor which he has previously ordered to be paid to another.
Succession of Johnson, 297.
4. The executor cannot be punished for contempt, in not paying a particular fund, when he has paid that fund to another creditor under the order of the court. *Ib.*
5. The administrator or executor is without the power to renounce or waive prescription after it has been acquired in favor of the estate he represents.
Sevier v. Succession of Gordon, 373.
6. Where the evidence shows that the testamentary executor has been recreant to his trust, and has administered the estate with a total disregard of the interests of the creditors and heirs, he will be removed from office, and a dative testamentary executor will be appointed according to law.
Rogers v. Morrison, Ex., 455.
7. An administrator cannot be permitted to resist an application for an order to sell the property of the succession founded on a judgment against the estate, by setting up unliquidated claims in reconvention against the judgment creditor.
Brown v. Roberts, Admr., 508.
8. An executor is not permitted to make any charges against the estate he administers for services rendered, other than the two and a half per cent. commissions allowed him by law on the amount of the inventory.
Succession of Sproul, 544.
9. An executor, having received the funds of the estate he administers, and afterward disposed of them for notes of the so-called Confederate States will be held liable to the heirs for the amount thus received. *Ib.*
10. To maintain an action by a creditor to remove an executrix from office, the party must allege that he is a creditor of the succession. The allegation that he is a creditor of the executrix or the heirs is not sufficient. C. P. 1018.
Carroll, Hoy & Co, v. Huie, Executrix, 561.

EXECUTORS AND ADMINISTRATORS—*Continued.*

11. A power of attorney given by a legatee, residing in another State, to collect a legacy, under a testament made in this State, creates a sufficient interest in said agent in the estate of the testator to entitle him to the appointment of dative testamentary executor. A dative executor will be appointed where it is shown that the executors named in the will have failed to qualify and the interest of the legatees require a representative.

Succession of Rice, 614.

12. The first applicant among creditors is entitled to the appointment of administrator, without reference to the amount or dignity of their claims against the estate.

Succession of Beraud, 666.

SEE BILLS AND PROMISSORY NOTES—*Livingston v. Gaussen*, 286.

EXECUTORY PROCESS.

1. The only question to be inquired into on appeal from an order of seizure and sale, is whether there was sufficient evidence before the judge *a quo* to authorize the fiat.

Citizens' Bank v. Dixey, 32.

2. An order of seizure and sale cannot be set aside on appeal, on account of subsequent irregularities in the execution thereof.

Ib.

3. The only question presented on an appeal by a third party from an order of seizure and sale is, had the judge who granted the order sufficient evidence before him to authorize the issuing of the writ. A third party, appealing from an order of seizure and sale, may avail himself of all that is in the record that affects his rights; but the validity of the mortgage on which the order of seizure is based, cannot be inquired into on such appeal.

Lapin v. Lapin, 52.

4. When a want of identity of the note, with the act of mortgage by which it is secured, is shown to exist, the holder cannot proceed by executory process to seize and sell the property mortgaged.

Taylor v. Boedicker & Badenhausen and Moody, 170.

5. The holder of promissory notes secured by mortgage on real estate, importing a confession of judgment, may proceed *in rem*, after the mortgagee has died, to foreclose the mortgage without provoking the appointment of an administrator to represent the succession.

Randolph v. Chapman, 486.

6. Where the act of mortgage imports a confession of judgment, and no partition of the estate has been made among the heirs, the mortgage creditor may seize and sell the hypothecated property, as if the original debtor were still alive.

Ib.

7. If the widow and heirs of the deceased husband, whose property is specially mortgaged, be non-residents, the mortgage creditor, in a suit against the mortgaged property, may provoke the appointment of a curator *ad hoc* to represent them.

Ib.

EXECUTORY PROCESS—Continued.

8. In an appeal from an order of seizure and sale, the Supreme Court will limit their examination to the validity of the order.
Taylor v. Hill, 626.
9. An order of seizure and sale granted on notes that were prescribed at the date of the order, will be set aside on appeal. *Ib.*
10. The wife is sufficiently authorized, if, in a proceeding by executory process to sell her mortgaged property, both she and her husband are made parties defendant. *Monition of Hall*, 692.
11. The averment in the petition that the defendants are non-residents, is sufficient to authorize the appointment of an attorney to represent them in a proceeding *via executiva*. *Ib.*
12. The court will notice judicially who are its attorneys, and where it appears that an attorney has been appointed curator *ad hoc*, the phrase curator *ad hoc* will be treated as surplusage, and the appointment be regarded as that of attorney to represent the absentee. *Ib.*
13. The attorney appointed to represent the absentee in a proceeding *via executiva*, is the proper party to whom notice of seizure must be addressed, and on whom service must be made. *Ib.*
14. The readvertisement of property that has been once offered for sale, is sufficient notice to all parties interested. *Ib.*
15. The law does not require the sheriff to return an order of seizure and sale in seventy days, retaining a copy where it has not been fully executed, the same as in case of a *fi. fa.* The direction by the clerk to return the order in seventy days has no legal effect. *Ib.*

FRAUD.

1. When the seizing creditor of the husband is confronted by the wife's claim to the property seized, founded on a judgment of separation of property, and the authentic act of sale and purchase of the property seized, from a third party to the wife, made after the judgment of separation and prior to the date of seizure, the creditor, to maintain the seizure, must allege and show fraud and simulation in obtaining the judgment of separation.
Myers v. Sheriff, 172.
2. The specifying of some of the ways by which a party has been imposed upon and deceived does not preclude the petitioner from giving evidence of other acts of deception under the general allegation of fraud. *Miller v. Bedell*, 573.

SEE DONATION—*Chase v. McCay*, 196.

GARNISHMENT.

1. The service of garnishment process fixes the rights of the seizing creditor from the moment the garnishee makes answer to the interrogatories. *Marchand v. Bell and New Orleans*, 33.
2. The seizing creditor acquires a privilege on the assets in the hands of the garnishee to date from the service of the interrogatories. *Ib.*

GARNISHMENT—Continued.

3. The city of New Orleans was indebted to Robert B. Bell in the sum of \$5,000; James McKenzie had judgment against R. B. Bell, on which he caused a garnishment process to issue against the city; the answers of the city to the interrogatories disclosed its indebtedness to Bell. A. Marchand brought suit against Bell and made the city a party, which was not served on the city until after the service of the interrogatories in garnishment. Held—That Marchand, the plaintiff, was only entitled to recover the balance due by the city to Bell after paying the amount of McKenzie's judgment. *Ib.*
4. A writ of *feri facias* is the basis of proceedings in garnishment in execution of judgment. The service of interrogatories on the garnishee will not operate a seizure of the assets in his hands unless the sheriff holds at the time a writ of *feri facias* against the defendant. *Matta v. Thomas*, 37.
5. Where A garnished on execution against B, a claim for which B is suing C, notice to B of the seizure is not necessary. The law only requires that notice of the seizure should have been given to C. *De St. Romes v. Levee Steam Cotton Press*, 291.
6. A garnishee must stand aloof from the litigating parties, and not lend himself to the advantage of either party. *Citizens' Bank v. Payne & Gilman*, 380.
7. The garnishment process cannot be used as a substitute for a direct revocatory action, nor will the strict rules relative to the answers of garnishees be applied to answers to interrogatories whose only tendency is to assail titles to property. *Battles v. Simmons*, 416.

HOMESTEAD.

1. Under the homestead law, the surviving widow and children of the deceased husband have a superior mortgage and privilege on the proceeds of the sale of the property of the husband to the extent of one thousand dollars over all other creditors, except the vendor's privilege and the expenses of the sale. She may assert this privilege in a suit between the other mortgage creditors and the purchaser of the property before the court that granted the order of seizure and sale. *Quertier v. Succession of Hille*, 429.
2. The claim of the widow and heirs of one thousand dollars, allowed by the statute of 1852, out of the succession of the husband and father, can not be taken from the funds of a partnership of which the deceased husband was a member, while the partnership debts are unpaid, and before a division of the assets are made between the partners. *Succession of Stauffer*, 520.

HUSBAND AND WIFE.

1. When the seizing creditor of the husband is confronted by the wife's claim to the property seized, founded on a judgment of separation of property, and the authentic act of sale and purchase

HUSBAND AND WIFE—*Continued.*

of the property seized, from a third party to the wife, made after the judgment of separation and prior to the date of seizure, the creditor, to maintain the seizure, must allege and show fraud and simulation in obtaining the judgment of separation.

Myers v. Sheriff, 172.

2. The signature of the husband to a note and mortgage to secure its payment, executed by the wife, is a sufficient authorization by the husband for the indorsement of the note by the wife.

City National Bank v. Barrow and Husband, 396.

3. On the trial of an injunction suit by the wife against the seizing creditor of her husband, a brother of the husband, a witness was asked by defendant on cross-examination the following question: "What did your brother say to you in relation to the sale from him to Mrs. Bracy (the donor) after it had been passed"? Held—that the answer was properly excluded, on the ground that the husband could not make a disclosure against the interest of his wife.

Simmons v. Norwood, Sheriff, 421.

4. A notarial transfer by the husband to the wife, of property, in payment of her judgment against him, cannot be canceled and annulled by a subsequent agreement between them.

Warfield v. Bobo, 466.

5. Contracts between the husband and wife are forbidden, except in the cases specially enumerated in article 2421 of the Civil Code.

Ib.

6. Where the transfer of real estate is absolutely null and void, the creditor may proceed against the property as though it had not been interposed.

Ib.

7. After a separation of property, the wife is not bound for the debts of the husband which were contracted before the separation, unless it is shown that the debt enured to her separate benefit or that of her separate property.

St. Louis University v. Prudhomme, 525.

8. A debt for the support and education of the common offspring, contracted by the husband while he has the control and administration of the dotal property of the wife, can not be enforced against the wife after she has resumed the administration of her separate estate by authority of a judgment of separation of property.

Ib.

9. The allegation of a married woman in her petition that she is "joined and authorized" by her husband, is not sufficient authority to enable her to prosecute the suit. *Succession of Pomeroy*, 576.

10. A married woman can only appear in court with her husband appearing also, or by showing his authorization otherwise than in her own averments.

11. The rule laid down in article 2269 of the Civil Code, that the husband can not be a witness for or against his wife, etc., is with-

HUSBAND AND WIFE—*Continued.*

out exception, and is applicable to all cases in which either of them are directly concerned, without reference to the time that such relation commenced. *Leon v. Bouillet*, 651.

SEE COMMUNITY.

SEE EVIDENCE—*Wells v. Kern*, 749.

SEE MORTGAGE—*Pecot v. Brothers*, 667.

INJUNCTION.

1. A District Court is competent to issue an injunction against a seizure made by the sheriff under a *fi. fa.* order of sale issued from another parish of the State, and to try the issues raised by the injunction. 5 An. 644; 16 An. 110.

Arenstein v. Weber, Sheriff, 199.

2. The question of simulation does not arise in a suit by injunction between the seizing creditor and a third opponent who claims the property, unless the seizing creditor shows that he owns or has sold it. *Ib.*

3. Where it is manifest from the record that the plaintiffs in injunction would be entitled to a new writ if the one which had issued were dissolved, the case will be remanded to enable the plaintiffs to supply the evidence omitted.

Citizens' Bank v. Crooks & Maristany, 324.

4. An injunction cannot issue to stay execution on grounds which might have been pleaded in defense before judgment.

Greene v. Johnson, Sheriff, 464.

5. A writ of injunction issued by the clerk of the District Court before the adoption of the Constitution of 1868, did not become void on the adoption of the constitution. Article 150 of the constitution continued the laws in force in relation to the duties of officers until the organization of the government under the constitution, although contrary to it.

Williams v. Douglass, Sheriff, 468.

6. An agent of an absentee holding a general power of attorney is competent to make the necessary oath to obtain a writ of injunction on behalf of his principal. *Ib.*

7. The motion to dissolve the injunction on the ground that the allegations in the petition are not true, must be referred to the merits. *Ib.*

8. A party applying for an injunction need not allege technically that "he will be injured." *Ib.*

9. An injunction will not lie to restrain the execution of a final judgment on the ground that the amount is erroneous.

Stinson v. Hill, Sheriff, 560.

SEE ACTION—*Richard v. Beauchamp*, 635.

INTERROGATORIES.

1. Interrogatories that have not been answered on or before the trial will be taken as confessed, where there is no order of court requiring the defendant to answer in open court.
Blanchin & Giraud v. Pickett, 680.
2. An administrator is bound to answer interrogatories propounded to him in a suit against the estate he represents. *Ib.*
3. Personal service of interrogatories on the party interrogated is not required. C. P., 187. *Ib.*

INTERVENOR.

1. An intervenor in an attachment suit will not be permitted to urge defenses personal to the defendant. The admissibility of testimony, the formality and regularity of the pleadings are matters pertaining exclusively to the defendant. His position in the case is limited to showing that he is the veritable owner of the property attached, or that he has a lien upon it superior to that of the attaching creditor. *Fleming & Baldwin v. Shields*, 118.
2. An intervenor cannot be heard by exception to the form of action by the plaintiffs. *Heirs of Bedell v. Hayes*, 643.
3. A creditor intervening in a suit by the heirs against their mother, to enforce payment of their interests in their father's estate which she has purchased, by opposing the validity of the claims of the heirs is not instituting an inquiry into the correctness of the judgment approving the adjudication. *Ib.*
5. An intervenor must establish the correctness of his own claim before he can oppose prescription to the plaintiff's demand.
Walker v. Simon, 660.

INSOLVENCY AND INSOLVENT PROCEEDINGS.

SEE BANKRUPTCY.

JUDGMENT.

1. A judgment rendered against a party who has neither been cited nor made an appearance by answer, is an absolute nullity.
Leblanc & Co. v. Perroux, 26.
2. Citation served on a person not a party to the suit, whom it is neither alleged nor shown was the agent of the principal, is defective, and judgment rendered thereon is null and void. *Ib.*
3. A judgment of the District Court not regular in form will be annulled on appeal, and such judgment as should have been rendered by the judge *a quo* will be pronounced by the Supreme Court. *Chapman v. N. O., Jackson and G. N. Railroad Co.*, 224.
4. The Judge of the District Court gave as reasons for judgment, "after hearing the evidence and argument of counsel, and considering the law and the testimony adduced, and the reasons orally assigned, it is ordered," etc. Held to be a sufficient compliance with article 80 of the constitution. *Fitzgerald v. Lapice*, 226.

JUDGMENT—Continued.

5. The citation required by the act of 1853, p. 250, in that the judgment may be revived before it is prescribed, refers to the judgment rendered by the District Court, and not that of the Supreme Court.
Arrowsmith v. Durell, 295.
6. The signing of a final judgment by the judge is a judicial act, which can only be performed in term time.
Simonds & Co., v. Leovy, 306.
7. The signature of the judge placed to a final judgment, out of term time, will have no effect. *Ib.*
8. Execution cannot legally issue on a judgment rendered on default until after notice of judgment has been served on the defendant.
Greene v. Johnson, Sheriff, 461.
9. A judgment rendered by a judge of one of the courts of the State deriving his title and office from the State authorities, while the State was in insurrection, is legalized by article 149 of the State Constitution, adopted in 1868.
Hughes v. Stinson, 540.
10. The judgment referred to in article 575 of the Code of Practice means a judgment that can be executed under a writ of *fieri facias*.
State, ex rel. Board Metropolitan Police, v. Judge Sixth District Court, 741.
11. A judgment making a writ of mandamus peremptory, directing a public officer to pay an amount of money in his hands, is not such a judgment as may be executed under a writ of *fi. fa.* From such a judgment, the judge *a quo* should grant a suspensive appeal, and fix the amount of the bond, without reference to the amount of the judgment making the writ peremptory. *Ib.*

JUDICIAL SALE.

1. A purchased at probate sale a lot of untanned hides then in the tan vats which were on the plantation, together with a lot of tan bark and the tools necessary to finish tanning out the leather. B purchased the plantation at the probate sale, on which the tan yard is situated, who brings this suit against A for the use of the tan yard, etc. Held—that inasmuch as no contract or agreement between A and B is shown about the use of the tan yard, and the *proces verbal* of the sale shows that A purchased the leather then in the tan, together with the tools and bark, he is entitled to the use of the tan yard free of costs for tanning out the leather.
Palmer v. Petty, 176.
2. At a probate sale of real estate belonging in part to minor heirs by and with the advice and authorization of a family meeting, approved by the under tutor, the purchaser is bound to pay the price bid. The omission to make the major heirs parties to the proceedings for the order of sale is cured by their failing to make objection before the sale.
Misner v. Heirs of Fulshire, 282.
3. A judgment creditor cannot sell under execution the buildings, seed cane, and mules placed on a sugar plantation separately from the plantation.
Citizen's Bank v Crooks & Maristany, 324.

JUDICIAL SALE—*Continued.*

4. Where real estate has been specially mortgaged, or the vendors' privilege has been duly recorded to secure the payment of the price, and the purchaser dies and his succession is opened in the probate court, an order of seizure and sale may issue from a court of ordinary jurisdiction against the succession, to enforce the mortgage rights, and the property mortgaged be seized and sold, and the same tribunal that authorizes the sale has jurisdiction over the proceeds thereof, and those entitled to them may claim them in such court, where their rights must be established.
Quertier & Co. v. Succession of Hille, 429.
5. A purchaser of property under an order of seizure, who claims the fruits of the sale, is precluded from questioning the validity of the decree ordering the immovables by destination to be sold with the mortgaged property.
Howe v. Whited & Gibbs, 495.
6. A party cannot claim the nullity of a judicial sale and the fruits of the sale in one and the same action.
Tarleton, Whiting & Tullis v. Kennedy, 500.
7. Where a court has jurisdiction its decree will protect the purchaser at probate sale from all informalities which may have preceded it, in the absence of any charge or proof of fraud.
Woods v. Lee, 505.
8. The indorsement on the back of an order of sale by the administrator who makes the sale is admissible in evidence on the trial of a suit to annul the sale. The objection that its genuineness is not proved goes to the effect.
Ib.
9. Five years possession of property purchased at probate sale will protect the purchaser against all irregularities and informalities which have been committed by the administrator after the date of the order of sale.
Ib.
10. A judicial sale, made in conformity with the laws of the State, after the twenty-sixth of January, 1861, is legalized by article 149 of the Constitution adopted in 1868.
Hughes v. Stinson, 540.
11. A third party who makes opposition to a monition sued out by the purchaser at judicial sale, must, in order to maintain his opposition, show an injury resulting to himself from the sale.
Gilmer, Application for Monition, 589.
12. A party having purchased property at probate sale during the war, cannot set up in defense to the payment of his obligations that the sale was made on the basis of the value of Confederate notes at the time of sale, and obtain a reduction of the price bid to that extent.
Bordelon v. Coco, 671.

JURIES AND JURORS.

1. Questions of fraud and the credibility of witnesses are peculiarly within the province of the jury, and their verdict will not be disturbed, unless it is manifestly erroneous. 9 R. 360.
Brown v. Sadler, 182.

JURIES AND JURORS—*Continued.*

2. The verdict of the jury, unsupported by the evidence in the record, will be set aside on appeal, and the judgment rendered thereon will be annulled and the suit dismissed.
Cardailiac v. Duthu, 219.
3. The qualifications of jurors to serve on the grand and petit juries in the courts of the State are, that they must be qualified electors of Louisiana. Acts of 1868, No. 110. *State v. Parks*, 251.
4. Where one of the panel of the grand jury is disqualified, any indictment found by them is null and void, and the accused may raise the objection and show the fact after verdict. *Ib.*
5. Where all the facts are spread upon the record, the Supreme Court will not take into consideration the charge of the judge *a quo* to the jury. 6 Martin, 498.
Moloney Brothers & Co. v. Rugely, Blair & Co., 330.
6. Where the verdict of the jury contradicts the admissions of the defendants in the answer, and the ends of justice require it, the cause will be remanded.
Bancker & Co. v. Marti and Walters & Elder, 587.
7. All objections to the informalities which may have occurred, in the formation, drawing or summoning of the grand jury, must be made on the first day of the term of the court, and not afterwards.
State v. Hoffpauer, 609.
8. Where the venire from which the grand jury is drawn is composed of legally qualified jurymen, it will not be set aside on objections made after the first day of the term. *Ib.*
SEE CRIMINAL LAW AND CRIMINAL PROCEEDINGS—*State v. Evans*, 321.

JURISDICTION.

1. When the record shows that a twelve months' bond has been given for the price of slaves sold under execution, payment thereof can not be legally enforced, nor will the purchaser be permitted to recover back any portion of the price he may have paid.
Thomas v. Hacket, 164.
2. The District Court that rendered the judgment, alone has jurisdiction of the action to annul it. C. P. 608; 2 A. 493.
Butman v. Forshay, 165.
3. The Adams' Express Company, domiciliated in the State of New York, and all of its incorporators citizens of other States than Louisiana, has a right, when sued in one of the courts of this State, by a citizen of the State, to remove the cause to the next Circuit Court of the United States. Judiciary Act of 1789, Section 12.
Rosenfield v. Adams' Express Co. 233.
4. All proceedings taken in a cause by a State court after erroneously denying an application to remove to the Circuit Court of the United States, are *coram non judge* and void, *Ib.*

JURISDICTION—Continued.

5. Failure to except to the jurisdiction will not render valid a judgment by a court without jurisdiction *ratione materiae*.

Duncan v. Holt & Co., 235.

6. A party, in whose favor a judgment has been rendered by a court having no jurisdiction, need not be made a party to the appeal.

Ib.

7. The act of the Legislature of 1853, page 190, and the subsequent acts of 1855 and 1865, making the Second District Court of New Orleans exclusively a probate court, and requiring all successions to be opened therein, does not divest the other District Courts of New Orleans of jurisdiction in succession cases pending in these courts at the date of the passage of the law. In such cases the jurisdiction of the court where the succession was opened is complete and exclusive until the final termination of all disputes involved in the settlement of the succession.

Chapman v. Bakewell, 353.

8. A judgment rendered by the Second District Court for the parish of Orleans, in a controversy wherein the Fifth District Court for the parish of Orleans has exclusive jurisdiction, is null and void, and the nullity will be so declared on appeal.

Ib.

9. The statute of 1856, p. 117, sec. 1, amending the act of 1855, providing for the trial of contested elections in the parish of Orleans, gives to any one of, and to all the six District Courts then in existence, jurisdiction over all suits for the contest of the elections of all officers elected for and in the parish of Orleans, with the right of appeal to the Supreme Court as in other cases.

Staes v. Gastinel, 407.

10. The office of Recorder of the Second District of the parish of Orleans is an office of the parish, and the election may be contested before the Sixth District Court for the parish of Orleans.

Ib.

11. Where real estate has been specially mortgaged or the vendor's privilege has been duly recorded to secure the payment of the price, and the purchaser dies and his succession is opened in the Probate Court, an order of seizure and sale may issue from a court of ordinary jurisdiction against the succession, to enforce the mortgage rights, and the property mortgaged be seized and sold, and the same tribunal that authorizes the sale has jurisdiction over the proceeds thereof, and those entitled to them may claim them in such court, where their rights must be established.

Quertier & Co. v. Succession of Hille, 429.

12. Under the act of March 29, 1865, the Fourth District Court of New Orleans was without jurisdiction to issue an injunction against the execution of a judgment of a justice of the peace, the Third District Court of New Orleans having exclusive jurisdiction over such cases by this act.

Mora v. Kuzac, 754.

JURISDICTION—Continued.

13. The institution of a suit in a court that has no jurisdiction is null, and the subsequent investiture of jurisdiction will not cure the nullity. *Ib.*

SEE ACTION—*Gosselin v. Womack*, 193.

SEE ACTION—*Juillard v. Rogay*, 259.

SEE ABSENTEES—*Succession of De Roffignac*, 364.

SEE BILLS AND PROMISSORY NOTES—*Lytle v. Whicher*, 182.

SEE BILLS AND PROMISSORY NOTES—*Campbell v. Waters*, 325.

SEE BILLS AND PROMISSORY NOTES—*Groves v. Clark*, 567.

SEE BILLS AND PROMISSORY NOTES—*Coco v. Calliham*, 624.

SEE BILLS AND PROMISSORY NOTES—*Heidenreich v. Leonard*, 628.

SEE BILLS AND PROMISSORY NOTES—*Levy v. Grémillion*, 635.

SEE BILLS AND PROMISSORY NOTES—*Estin v. Ducrest*, 656.

SEE BILLS AND PROMISSORY NOTES—*Nunez v. Winston*, 666.

SEE COMMUNITY—*Heirs of Bedell v. Hays*, 643.

SEE CONFEDERATE TREASURY NOTES.

SEE CONFEDERATE OBLIGATIONS.

SEE PARISH COURTS.

SEE SALE—*Hayden v. Phillips and Foster*.

SEE SOVEREIGN POWER—*Dranguet v. Rost*, 533.

JURISDICTION, APPELLATE.

1. Where the amount involved does not exceed five hundred dollars, the appeal will be dismissed. *Rooney v. Brown*, 51.
2. In a proceeding by mandamus to recover possession of the books, keys, etc., in which the office of sheriff is kept, the party against whom the writ is directed must show an interest in the possession of such property exceeding five hundred dollars to entitle him to a suspensive appeal from the judgment ordering him to deliver possession to the claimant.

State ex rel. Creagh v. Judge Seventh Judicial District, 107.

3. To give the Supreme Court jurisdiction of the appeal the amount in dispute must exceed \$500. *Succession of Espinola*, 264.
4. A general allegation of opposition to all the items on the debit side of the account, without proof to sustain it, will not give the Supreme Court jurisdiction. The amount over which there is a contest only can be taken into consideration in determining the question of jurisdiction, and if not above five hundred dollars, the appeal will be dismissed. *Ib.*
5. It is the amount in dispute in the District Court that gives the Supreme Court jurisdiction of the appeal. *Mazen & Shearer v. Landrum*, 366.
6. The act of the Legislature of March, 17, 1859, incorporating the city of Carrollton, authorizes suit to be brought by the Mayor and Councilmen for and on behalf of the city, the affidavit of the Mayor that the interest of the city is above five hundred dollars is sufficient to give the Supreme Court jurisdiction of the appeal.

Carrollton v. Board of Metropolitan Police, 447.

JURISDICTION, APPELLATE—Continued.

7. An order issued by the Parish Judge, directing the clerk of the District Court to transfer to the Parish Court the record of a suit, is in the nature of a proceeding by mandamus, and no appeal will lie from such order without showing an adverse interest above five hundred dollars. The Supreme Court will notice, of their own motion, their want of jurisdiction. *Swan v. Bry*, 481.
8. The Supreme Court has appellate jurisdiction only, and cannot try questions of fact until they have been passed upon by the court below. *Succession of King*, 502.
9. Questions of fact not raised on trial in the District Court cannot be examined on appeal. *Elton v. Temple*, 502.
10. The Supreme Court has appellate jurisdiction only, and any fact not presented in the court below will not be noticed on appeal. *Succession of Taucin*, 536.
11. A writ of mandamus will not issue to compel the District Judge to grant a suspensive appeal when it is shown that the amount in contest is not sufficient to give the Supreme Court jurisdiction of the appeal.
State ex rel. Western Union Tel. v. Judge Seventh Dist. Court, 728.
12. The amount necessary to the jurisdiction of the appellate court is the sum in controversy at the time of judgment. *Ib.*

LANDLORD AND TENANT.

1. Where a party has leased, for a given time, certain described premises, including several houses and lots of ground in the city of New Orleans, and a fire breaks out which destroys the buildings on a portion of the leased premises, the lessee has the option under art. 2667 of the C. C., to demand a revocation of the entire lease, or a diminution *pro tanto* of the rate. He cannot retain the portion of the leased property unaffected by the fire and have the lease revoked as to that which was destroyed.
Penn v. Kearny, Blois & Co., 21.
2. Where the evidence shows that a commercial firm have enjoyed the benefits of a lease that has been made to and in the name of one of the members of the firm, they will be held liable in *solido* for the rent of the property leased. *Ib.*
3. Evidence to show that the firm name was marked on goods deposited in the warehouse is admissible in a suit by the lessor to recover the rent. *Ib.*
4. Where a sale of a lease, owned by a succession, has been judicially declared to be null, the property in the lease reverts to the estate.
Kellar v. Blanchard, 38.
5. The lessee can not make repairs on the premises leased at the expense of the lessor, without first putting him in default.
Favrot v. Mettler, 220.

LANDLORD AND TENANT—*Continued.*

6. A, in his capacity of lessor, brought suit against B, his lessee, for rent; A afterwards brought suit against B to annul the lease and restore the leased premises. B excepted to the latter suit on the ground that the same cause of action was pending in the other suit. Soon after filing this exception of *lis pendens* to the suit to annul the lease, B filed an answer to the suit for rent, setting up a reconventional demand in damages, with a prayer that he be quieted in the possession of the premises leased, and argued on the trial of the exception of *lis pendens* that the issue created by the answer was the same as the demand for possession in the suit to annul the lease. Held—That B could not urge the pendency of a contestation thus created by himself against a *prior* demand of A. *Morgan v. Tamiet*, 266.
7. If a lessee of a market stall or stand dies, the property in the good will of the stand falls into his succession. *Succession of Journe*, 391.
8. A contract of lease, without a lawful cause, cannot be made the basis of a demand for rent. *Brown v. Roberts*, 508.
9. The lessor has a privilege for the payment of the rent on all the movables found on the leased premises, without reference to whether such property belongs jointly to the partners in the planting business, or to one of them only. *Hynson v. Cordukes*, 553.
10. Evidence is inadmissible in a suit by the lessor for rent, to show the terms and conditions of a partnership between the lessees. *Ib.*
11. Where a lease has been given for one year, with a privilege of renewal for five years, and a third party binds himself as surety for the lease, and the lease is renewed at the expiration of the year, the surety is not bound on the extended lease, unless it is shown that he consented to the extension. *Fasnacht v. Winkleman*, 727.
12. In a suit on a contract of lease, the lessor may show occupancy of the premises, and recover rent for the time, although he fails to establish the contract. *Silverstein v. Stern*, 743.

LAWS.

1. Where the law is changed after prescription begins to run, the time elapsed before the change is to be computed according to the old law, and that which follows according to the new. *Fisk v. Bergerot*, 111.
2. By the statute law of Mississippi all obligations, or notes, or drafts for money, whether payable to order or not, are assignable by simple indorsement. Revised code of Mississippi, p. 355. *Marx v. Wheelis*, 140.

LANDLORD AND TENANT—Continued.

3. The law of 1856, section 131, page 136, exempting the city of New Orleans from giving bond in litigations to which she is a party does not apply to the Treasurer or other officers of the city. The statute exempting the corporation from giving bond is an exceptional one, and cannot be extended to other parties than those mentioned. *State, ex rel. George, v. Mount, City Treasurer*, 177.
4. Where a law is clear and free from all ambiguity, the letter of it must not be disregarded under the pretense of pursuing its spirit. C. C. 13. *Arrowsmith v. Durell*, 295.
5. The title of the act of the Legislature of 1863, No. 27, entitled an act "to determine the mode of filling vacancies in all offices for which provision is not made in the constitution" is sufficiently comprehensive to embrace the objects of the statute. *State, ex rel. Belden, Att. Gen., v. Leovy*, 538.
6. Section one of this act does not violate the constitution in requiring vacancies in municipal offices to be filled by appointment. *Ib.*
7. The statute of 1865, exempting certain property from seizure under execution, is in derogation of common right, and the exemption from seizure will not be extended to objects not expressly designated in the law. *Guillory v. Deville*, 686.
8. The title of the act of the General Assembly, approved eleventh of July, 1868, entitled "An Act relative to the finances of the State," is sufficiently explicit to embrace the objects of the statute. The title of a law is not to be strictly construed; neither is the above quoted act retroactive in its effect.

City National Bank v. Mahan, Tax Collector, 751.

SEE CONSTITUTION.

LETTER OF CREDIT.

1. Darby & Tremoulet, commission merchants, in the city of New Orleans, made advances to A. Grevenberg to a large amount, predicated on a letter of credit written by Mrs. Widow Fuselier, his mother, requesting said firm to make advances to and accept the drafts of said Grevenberg to enable him to pay for a plantation. Grevenberg obtained the advances and afterwards shipped his sugar crops to said merchants, which far exceeded in value the amount of advances made to him, the proceeds of which he was allowed to draw out without reserving the amount of the advances. Grevenberg died, and his merchants failed to present and enforce their privileges against his estate. Held—That the failure on the part of said Darby & Tremoulet to enforce payment for their advances, while it was in their power, discharged the surety who was bound on the letter of credit. That under this state of facts, the party giving the letter of credit is discharged by their laches. *Darby & Tremoulet v. Fuselier*, 636.

LIS PENDENS.

1. Where suit was brought before the United States Provisional Court, but not decided before that tribunal ceased to exist, between parties residing in this State, the plea of *lis pendens* will not prevail in a suit before the State courts on the same obligation and between the same parties, on the ground that both parties being residents of the State, the case could not be transferred to the United States Circuit Court.

Noland v. Sterling, 277.

2. The plea of *lis pendens* will not be maintained where it is shown that a suit by mandamus has been brought in the name of the State on the relation of a claimant for office, and is still pending, and another suit has been brought in the name of the State by the District Attorney joining the same claimant for office as in the mandamus suit under the acts of the Legislature of 1868, numbered 58 and 156, providing a remedy against usurpation and intrusion into office. In the mandamus suit the State is merely a nominal party, and in the suit brought under these acts of the Legislature the State is the actual party in interest wherein the right to hold the office is the principal subject of inquiry. Want of identity of parties, and not having the same objects in view, operates as a bar to the plea.

State v. Kreider, 482.

3. A holder of mortgage paper having proceeded by executory process to enforce payment, cannot, while the suit is pending, proceed *via ordinaria* against the maker of the notes. In such a case the plea of *lis pendens* will be maintained as to the latter suit.

Taylor v. Hill, 639.

MANDAMUS.

1. The right to an office cannot be inquired into under a proceeding by mandamus. Only the right to the possession of the books, papers, room, keys, etc., can be made the subject of inquiry under this writ. 4 N. S. 623, 12 An. 719, Acts of 1868, p. 71, 199 and 220.

State ex rel. Sternberg v. Lagarde, 18.

2. Where the facts show that the relator is entitled to a suspensive appeal, the judge may be compelled by a writ of mandamus to grant the appeal.

State ex rel. Adams v. Judge Second District Court, 64.

3. The right to an office cannot be inquired into or tested under existing laws on an application for a writ of mandamus.

State ex rel. Hero v. Pitot, 336.

4. The Controller of the city of New Orleans may be compelled by a writ of mandamus to warrant on the City Treasurer for bills which he has approved. Mandamus is the proper remedy to compel a ministerial officer to perform purely ministerial acts.

State ex rel. Pinac v. Mount, Treas., and Landry, Cont., 352.

5. The Treasurer of the city of New Orleans cannot be compelled by mandamus to pay a warrant not yet drawn by the Controller.

Ib.

MANDAMUS—Continued.

6. A mandamus is the proper remedy to compel the Treasurer of the city of New Orleans to pay a warrant drawn upon him by the Controller, and the writ will properly be made peremptory when the Treasurer in his answer discloses no sufficient reason for his refusal to pay. *State ex rel. Avery v. Mount, Treasurer*, 369.
7. The writ of mandamus will not lie to compel the Treasurer of the city of New Orleans to perform any act where it becomes his duty as the fiscal agent of the city to exercise a discretion. *Ib.*
8. In a proceeding by mandamus to compel the Treasurer of the city of New Orleans to exchange certain bonds of the city for warrants drawn by the Controller, the court will not, under the prayer for general relief, render judgment ordering the Treasurer to pay the warrants in money. *Ib.*
9. A writ of mandamus will not issue to compel the District Judge to grant a suspensive appeal when it is shown that the amount of the judgment is not sufficient to give the Supreme Court jurisdiction. *State ex rel. Western Union Telegraph Co. v. Judge Seventh District Court*, 728.
10. An appeal will lie from an interlocutory order dissolving an injunction on the ground that the surety on the injunction bond is not good and solvent, and a writ of mandamus will issue to compel the judge to send up the record. *State ex rel. Storrs v. Judge Fourth District Court*, 736.

MARRIAGE CONTRACT.

1. P. M. B. Lapice and others executed their promissory note for \$50,000 in favor of Marie Josephine Lapice for borrowed money. Marie Josephine Lapice afterwards made a marriage contract with Jules DeLongpre, in which among other stipulations this note for \$50,000 was specially set apart to her as her dowry, an accurate description thereof being given; they were subsequently married, and the note passed into the hands of the husband. Held—That the stipulation of \$50,000 in the marriage contract was merely descriptive of the note, and not an estimation, and the note or its value did not fall into the community under article 2334 of the C. C., and the husband became chargeable with no particular sum on receiving it. *Fitzgerald v. Lapice*, 226.
2. The wife, properly authorized by her husband or the judge, may sue for in her own name and recover the amount of a note settled upon her by the marriage contract as dowery. C. P. 107. The appearance of the husband to authorize the suit concludes him from any demand he might have against the makers of the note. *Ib.*

MARRIED WOMEN.

1. A married woman may bind her separate estate for the debts of her husband by complying with the provisions of the act of the Legislature of 1855, approved March 15, No. 200, entitled "An Act to enable married women to contract debts and bind their paraphernal or dotal property." *Keller v. Ruiz*, 283.

SEE HUSBAND AND WIFE.

METROPOLITAN POLICE.

1. The omission in the Constitution of 1868 of article 133 of the Constitution of 1864, left the whole subject of the corporation of the city of New Orleans and its police regulations under the power and discretion of the Legislature. *Diamond v. Cain*, 309.
2. Act No. 1, approved July 9, 1868, creating a Board of Police Commissioners for the city of New Orleans and giving them full power to remove and appoint the police force, and repealing all other acts and parts of acts in conflict with its provisions, divested the Mayor of the city of New Orleans of all authority to appoint a chief or other policeman. Articles 159 and 42 of the Constitution of 1868 were not violated in the passage of this act. (See acts Nos. 74 and 145 of 1868, and Nos. 60 and 92 of 1869). *Ib.*
3. The appointment of a chief of police by the Mayor of the city of New Orleans after the passage of act No. 1, approved on the ninth of July, 1868, was without any legal force or effect, and such officer so appointed had, by virtue of his appointment, no interest in the office of chief of police, nor in the office of superintendent of metropolitan police created by act No. 74, approved September 14, 1868. Having no interest in the office, he was not entitled to the writ of *quo warranto* nor injunction. *Ib.*
4. The act of the Legislature of September 14, 1868, creating a metropolitan police district repealed so much of the charter of the city of Carrollton approved March 17, 1859, as gave to the Mayor of said city the control and administration of the police.
Carrollton v. Board of Metropolitan Police, 447.
5. The act of the Legislature of September 14, 1868, took away all control over the police of the city of Carrollton from the Mayor, and vested the same in the Board of Metropolitan Police, and the Mayor and Council, in their representative capacity, having no right in themselves to administer the police, they cannot question the constitutionality of the act of the Legislature vesting the power of policing the city in the Board of Metropolitan Police.
Ib.
6. That part of the act of the Legislature of September 14, 1868, creating a metropolitan police district and providing for the government thereof, which divests the Mayor and Council of the city of Carrollton from all control over the police of said city, and vests the same in the Board of Metropolitan Police created by the act, is constitutional and valid. *Ib.*

MORTGAGES.

1. The insertion in the act of mortgage of the pact *de non alienando* does not invest the mortgage creditor with the right to disregard the forms of law in making a forced alienation of the mortgage debtor's property. The non-alienation clause springs from the agreement of the parties, and dispenses the mortgage creditor from the necessity of resorting to the hypothecary action.
Palma v. Abat & Genereux, 11.

MORTGAGES—*Continued.*

2. The transferee of mortgaged property with the pact *de no alienando* contained therein, may sue to annul a forced sale of the property by the mortgaged creditor, on the ground that the formalities of law have not been observed in making the sale. *Ib.*
3. The objection that the mortgagee or his transferee has the right to require that the property mortgaged shall be sold in separate parcels, comes too late if not made before the sale. This fact in itself furnishes no ground to annul the sale. *Ib.*
4. The tacit mortgage allowed by law in favor of minors, on the property of their tutor, dates from the appointment, and the tacit mortgage allowed by law on the property of the husband in favor of the wife to secure the restitution of her paraphernal property which has come into his hands, dates from the time the property was received. *Mille v. Dupuy, 53.*
5. In a case where the property of the husband is not sufficient to pay the mortgage due his ward, for which he is liable as tutor, and the mortgage in favor of his wife for the restitution of her paraphernal property which he has received, the rank and priority of mortgage must be determined by the date at which they respectively took effect. *Ib.*
6. A recital in an act of mortgage that a previous mortgage had been inscribed against the same property will not operate a legal reinscription of the former mortgage; nor will the recital of the former mortgage in the certificate make the latter a party to the former act, or operate as a further notice than that already given by the first inscription. *Britton & Koontz v. Janney, Sheriff, 204.*
7. The pact *de non alienando* contained in an act of mortgage does not dispense the mortgage from the necessity of inscription in the mortgage office, and reinscription within ten years in order to preserve and give validity to the mortgage rights. *Ib.*
8. The tacit mortgage of the heirs of their deceased mother on the property of their father, for the restitution of the paraphernal property, or funds which he has received, only attaches on the property of the father from and after the date at which he becomes the owner of the property. *Smith v. His Creditors, 241.*
9. The mortgage, resulting from a judgment against the husband and his brother *in solido*, rendered and recorded before the sale of the property from the brother to the husband, will take precedence of the tacit mortgage against the property of the husband in favor of the heirs for the restitution of the paraphernal funds of their mother deceased. Such preference of mortgage rights may be enforced against the proceeds where the property has been sold. *Ib.*
10. The fact that certain of the Clinton and Port Hudson Railroad bonds were kept in the same safe where the liquidator of the company kept its papers, books and assets, did not operate a payment of the bonds nor an extinction of the mortgage.

Clinton and Port Hudson Railroad Co., v. Brown, 248.



MORTGAGES—Continued.

11. Where the sheriff held an execution issued in favor of the company directing the sale of the mortgaged property, nothing short of a payment into the sheriff's hands would operate as a payment or satisfy the mortgage. *Ib.*
12. Where there are two separate debts, and to secure the payments of which two separate mortgages are given on the same property, the date of registry of the mortgages will determine the rights of the holders. *Peychaud v. Citizens' Bank, 262.*
13. Where an act of mortgage declares the object mortgaged to be the entire interest in a certain parish named, giving the number of acres, and mentioning the river on or near which it lies, and by which it is bounded, with a reference to certain titles of the mortgager to be found in the office of the Recorder of Mortgages for the parish, the description of the property is sufficient. *City National Bank v. Barrow, 396.*
14. The right to have a mortgage canceled can not be tested before the courts unless all those having an interest be made parties. *State ex rel. Durrie v. Recorder of Mortgages, 401.*
15. The sale of the property of a bankrupt by the assignee does not operate a release of the mortgages and attach them to the proceeds. *Ib.*
16. The mortgage and vendor's privilege on real estate is not impaired by the sale of the property by a syndic or of the insolvent, and the holder of the mortgage and privilege is entitled to first preference on the proceeds of the sale after paying the expenses of the sale. *Marcelin v. His Creditors, 423.*
17. A notarial act of mortgage has no effect against third parties until it is registered in the office of the Recorder of Mortgages for the parish where the property is situated. *Harang v. Plattenmier, 426.*
18. Where three separate mortgages have been executed on the same piece of property at different dates, and the last of the three is recorded first, and the property has been sold to pay them, the proceeds must be applied by preference to the payment of the mortgage first recorded. The fact that the last mortgagee had notice of the existence of the other two mortgages of prior date will not avail. *Ib.*
19. A transfer or assignment of a promissory note secured by mortgage carries with it all the rights of mortgage, and privileges given to secure it. *Perot v. Levasseur, 529.*
20. Where a series of notes have been executed, secured by mortgage on the same piece of property, and the payee transfers them to different third parties, the privilege of the holders is concurrent on the proceeds of the sale of the mortgaged property. *Ib.*

MORTGAGES—Continued.

21. A vendor of real estate in order to defeat the mortgagee of his vendee, on the ground of fraud in the sale of the property, must show that the mortgagee was aware of the fraud at the time the contract of mortgage was made. *Mackler v. McClelland*, 579.
22. A party accepting a mortgage to secure the payment of a debt, is bound by the terms and sense in which it is expressed.
Bethel v. Hawkins, 620.
23. The transferees of portions of a mortgage debt are entitled to be paid *pro rata*, out of the proceeds of the sale of the property mortgaged, without regard to the time when the transfer was made.
Begnaud v. Roy, 624.
24. A party holding a mortgage entitling him to executory process to enforce it, may proceed *via ordinaria* against the mortgagee, either in the parish of his domicile and residence, or in the parish where the mortgaged property is situated. *Generes v. Simon*, 653.
25. A mortgage given by an heir on her individual property to secure her one-fifth interest in an annuity created by her father for the purchase of a lot of slaves, of which she inherited the one-fifth, is an accessory to the principal obligation, to wit, the price of slaves, and cannot be enforced. *Lefevre v. Haydel*, 663.
26. The mortgage of the wife attaches to the interest of the husband in the lands held in common before partition, to secure her claim for her paraphernal property received by him, and a *datien en paiement* to her in satisfaction of her claim is authorized.
Pecot v. Brothers, 667.

NEW ORLEANS.

- SEE APPEAL—*State, ex rel. Belden, Att. Gen., v. Markey, Kaiser, et al.*, 743.
- SEE CORPORATIONS—*Diamond v. Cain*, 309.
- SEE CORPORATIONS—*State ex rel. Belden, Att. Gen., v. Leovy*, 538.
- SEE MANDAMUS—*State ex rel. Pinac, v. Mount and Landry*, 352.
- SEE MANDAMUS—*State ex rel. Avery, v. Mount Treasurer*, 369.
- SEE OFFICE AND OFFICERS—*State ex rel. Belden, Att. Gen., v. Leovy*, 538.

OBLIGATIONS.

1. Where two parties holding claims of equal dignity against a third enter into an agreement in writing to the effect that one is not to take any legal steps without giving the other notice, and in disregard of the stipulations in the agreement one of the parties proceeds by seizure and sale, he will not be allowed any preference over the other on account of the seizure thus made in violation of the agreement. In such a case the law will place the other party in the exact position he might have occupied had he received notice.
Mille v. Dupuy, 53.

OBLIGATIONS—Continued.

2. Where a debt existed between two parties who liquidated the same by note, at a time and under circumstances rendering the execution of the note illegal on account of one party residing within the Confederate and the other within the Federal military lines, during the late war, and the debtor promised to pay the debt after the war had ceased, with a full knowledge of the nature and origin of the obligation, the promise can be enforced and the debtor compelled to pay the obligation. *Ledoux v. Buhler*, 130.
3. A party who received a note for collection, and afterward returned it to the party from whom he received it, cannot be held responsible on proof that another party gave him notice while it was in his possession that he was the owner and would hold him responsible if he did not deliver the note.

Satterfield v. Delavalade, 650.

SEE ACTION—*Snodgrass v. Adams*, 136.

OFFICE AND OFFICERS.

1. Officers of the city of New Orleans, who received their appointment from the military authority during the time the city was under military control, have no claim against the city for salary for the term fixed by law for such office, where it is shown that they have been dismissed by the military before the term of the office expired by law. *Mandell v. New Orleans*, 9.
2. Where the salary of an officer is fixed by law for all services rendered in his official capacity, no action will lie for the recovery of additional compensation for alleged extra services. *Ib.*
3. The right to an office cannot be inquired into under a proceeding by mandamus. Only the right to the possession of the books, papers, rooms, keys, etc., can be made the subject of inquiry under this writ. 4 N. S. 623, 12 An. 719, Acts of 1868, p. 71, 199 and 220. *State ex. rel. Sternberg v. Legarde*, 18.
4. In a controversy for an office the salary of which is fixed by law, it is not necessary to aver or prove that the amount is above five hundred dollars to give the Supreme Court jurisdiction. *Fish v. Collens*, 289.
5. The election of a party to an office does not depend upon the ineligibility of his competitor, but upon the will of a majority or plurality of the legal voters of the district. *Ib.*
6. Officers of the city of New Orleans who received their appointments while the city and State were under the control of the military authorities were removable at pleasure. *Hire v. New Orleans*, 428.
7. The thirteenth section of the act of September 14, 1868, repealing the charter of the City of Jefferson, approved March 8, 1867, did not abolish the offices of the corporation. This clause only repealed the old charter in so far as its provisions were not incorporated in the new charter. *State v. Kreider*, 482.

OFFICE AND OFFICERS—*Continued.*

8. The failure to hold an election for municipal officers of the city of Jefferson on the first Monday of January, 1869, as provided in section three of the amended charter, adopted September 14, 1868, did not vacate the offices which were filled by election under the charter of 1867. *Ib.*

9. The appointment to an office by the Governor is void if there was no vacancy at the time the appointment was made. *Ib.*

10. Section seven of act number thirty-nine of 1868, entitled "An Act to ascertain the eligibility of persons elected or appointed to office and to declare offices vacant," etc., is unconstitutional and void. *State ex rel. Downes v. Towne*, 490.

11. A judge of a court or other constitutional officer of the State may be removed from office by impeachment, by address of the Legislature, or by proceedings under the intrusion act, if it be judicially ascertained that he is disqualified by the constitution of this State or the United States. He cannot be removed from office by an act of the Legislature, nor has the Legislature the power to pass an act authorizing or instructing the Governor to declare an office vacant which is created by the constitution. *Ib.*

12. The appointment and commissioning by the Governor of a party to an office which has been legally filled, without the vacancy being first declared according to law, is an absolute nullity. *Ib.*

13. The title of the act of the Legislature of 1868, No. 27, entitled "An Act to determine the mode of filling vacancies in all offices for which provision is not made in the constitution" is sufficiently comprehensive to embrace the objects of the statute.

State ex rel. Belden, Att. Gen., v. Leovy, 538.

14. Section one of this act does not violate the constitution in requiring vacancies in municipal offices to be filled by appointment. *Ib.*

15. The Common Council of the city of New Orleans have no power to fill vacancies in offices of the corporation arising from death, resignation, or otherwise. In such cases it is made the duty of the Governor to appoint for the unexpired term. *Ib.*

16. Act No. 156 of 1868, in providing a mode of legally ascertaining whether persons holding office under the authority of the State of Louisiana are incompetent to exercise the duties thereof, by reason of the disabilities imposed on certain classes of persons by the Constitution of the United States, does not impose pains and penalties on any one, nor does this act assume authority which appertains exclusively to the Federal tribunals.

State ex rel. Sandlin, Dis. Att., v. Watkins, Judge, 631.

17. A suit brought under the intrusion act, No. 156 of 1868, against a party in office, is not to inflict punishment, nor to impose penalties or disabilities upon him, but simply to inquire into his right to hold and exercise the office. *Ib.*

OFFICE AND OFFICERS—*Continued.*

18. Section 3 of the act of Congress of twenty-fifth of June, 1868, entitled an act to admit the States of North Carolina, South Carolina, Louisiana and other States to the Union, provides that no person prohibited from holding office under the United States by section three of the proposed amendment, known as Article Fourteenth, shall be deemed eligible to any office in either of the said States. *Ib.*
 19. The State Courts of Louisiana will enforce this law of Congress; and where it is ascertained by suit under the intrusion act, No. 156 of 1868, that a party is disqualified from holding an office under the provisions of this act, his disqualification will be judicially declared. *Ib.*
 20. Proceedings against a party alleged to have usurped or intruded into an office, must be brought by the District Attorney, or District Attorney *pro tem.* of the parish in which the case arises, in the name of the State. *Hayes v. Thompson, 655.*
 21. A party having held an office before the war, which required him to take an oath to support the Constitution of the United States, and, after the passage of the secession ordinance by the State, having accepted and filled the office of clerk of one of the District Courts of the State, is not disqualified from holding office by the act of Congress of 1868, admitting Louisiana to representation in Congress, nor by the fourteenth amendment to the Constitution of the United States. *Hudspeth, Dis. Att., v. Garrigues, 684.*
 22. The holding of the office of clerk of the District Court, while under the authority of the State while in rebellion, was not of itself an act of rebellion. *Ib.*
 23. An action against a party for usurping, intruding into or unlawfully holding or exercising a public office in the parish of Orleans must be brought by the Attorney General in the name of the State. *State ex rel. Wickliffe v. Delassize, 710.*
 24. In a controversy for office under the intrusion act, a third party, not holding or claiming the office in dispute, can not appeal from the judgment of the court *a qua.* *State ex rel. Sullivan v. Mount, Kendall, 755.*
- SEE MANDAMUS—*State ex rel. Hero v. Pitot, 336.*

PARISH COURT.

1. The Parish Court is without jurisdiction *ratione materia*, in a suit to annul a sale, when the property involved exceeds in value the sum of five hundred dollars. *Rogers v. Morrison, Ex., 455.*
2. The Parish Court is without jurisdiction *ratione materia*, in a suit where a succession is either plaintiff or defendant, and the amount claimed is above five hundred dollars. *Swan v. Gayle, Adm., 478.*

PARISH COURT—*Continued.*

3. The act of the Legislature, approved October 6, 1868, No. 141, entitled "An Act further defining the jurisdiction of Parish Courts in succession cases," is unconstitutional, null and void, because the object of the statute is not expressed in the title. *Ib.*
4. The Parish Court is without jurisdiction *ratione materia*, in a suit for a moneyed demand for or against a succession, where the amount in dispute is above five hundred dollars.
Succession of Bartlett, 531.
5. The act of the Legislature of 1869, No. 110, entitled "An Act to amend and re-enact sections four and nine of an act entitled an act to organize the Parish Courts of this State," etc., in authorizing clerks of district courts to perform clerical duties of the parish courts, and receive the fees therefor, does not create the office of clerk of the parish court, and is, therefore, not in violation of article 117 of the constitution, which provides that no person shall hold or exercise, at the same time, more than one office.
Hawley v. Barlow, 563.
6. The ninth section of the act of 1869, No. 110, in providing that the parish judges shall receive a salary and such fees as are allowed to clerks of district courts, in all cases of appeals from justices of the peace, does not violate that part of article eighty-six of the constitution which declares that parish judges shall receive a salary and fees, to be provided by law. *Ib.*
7. The Parish Court is without jurisdiction where the amount involved is above five hundred dollars. *Edwards v. Edwards, 610.*
8. The Parish Court is without jurisdiction, in a suit for a moneyed demand, where the amount claimed is above five hundred dollars.
Derby v. Robertson, 616.
9. The Parish Court is without jurisdiction *ratione materia*, in a suit where the amount involved is above five hundred dollars.
Hartman v. Rentrope, 663.

PARTNERSHIP.

1. One partner cannot sue the other for a specific sum until the affairs of the partnership have been liquidated. The liquidating partner of a commercial firm cannot be called in warranty by the administrator on a demand against the estate of a deceased partner.
Succession of Dolhonde, 3.
2. An action will not lie to recover an account for goods sold where it is shown that a partnership exists between the parties. In such a case the suit will be dismissed with the rights of the party reserved to sue for a settlement of the partnership accounts.
Marx v. Bloom, 6.
3. Where one of three partners sells his interest in the partnership to the other two, who execute their agreement in writing, signed in their individual capacity, which he terms a counter letter, and he

PARTNERSHIP—*Continued.*

afterwards brings suit for a liquidation and settlement of the partnership affairs, and to recover his share of the profits, according to the terms and stipulations of the counter letter, any amount that may be found to be due by them on account of the purchase or profits must be borne jointly, and not *in solido*, each paying one-half thereof. *Lusk v. Graham & Cole*, 159.

4. The rule to be observed in making a settlement of partnership transactions is to ascertain the value of the assets, composed of the property, credits and receipts belonging thereto, and from the aggregate amount deduct the debts and expenditures; the balance remaining to be divided in accordance with the terms and stipulations of the partnership. *Ib.*
5. A and B were engaged as partners in the planting business in 1866. C, a merchant, furnished their supplies. In 1867, they continued their account with C, who continued to supply them as partners. Held—That they were bound to C, as ordinary partners, for the supplies furnished, notwithstanding they may have dissolved the partnership as between themselves. *Schorten v. Davis & Brother*, 173.
6. A contract or partnership between two parties, the one residing within the Federal lines of military occupation and the other within the lines of the insurrectionary forces, during the late war, for the purpose of carrying on a commercial business in the purchase and sale of cotton between the contending parties, was in conflict with the act of Congress of July 13, 1861, prohibiting all commercial intercourse between the contending parties. The rights and obligations growing out of such business relations being in contravention of a prohibitory law, cannot be judicially enforced. *McWilliams v. Bryan & Irvine*, 211.
7. In a suit for the liquidation and settlement of partnership transactions and accounts and a partition of the property held in common, all the partners or parties interested must be cited and made parties. *Francis v. Lavine*, 265.
8. The partner *in commendam*, by failing to have a final settlement of its affairs, does not *ipso facto* become responsible for the liabilities created by the active partner, after the expiration of the term of the partnership. *Slocumb v. De Lizardi*, 355.
9. A partner *in commendam*, having allowed his money to remain in the partnership after the expiration of the term, as shown by the recorded act, under the belief that he was still a partner *in commendam*, and only liable for the amount invested, cannot be held liable as a general partner, unless he has done something, or permitted something, to be done, which the law declares will render him responsible as a general partner. *Ib.*
10. The surviving partner of a commercial firm, in his capacity of liquidating partner, having received Confederate treasury notes

PARTNERSHIP—Continued.

in payment of the debts due the firm, became personally responsible to the heirs of the deceased partner for the amount shown to be due them on a settlement of the partnership.

Succession of Wilder, 371.

11. Partnership property cannot be specially seized or attached for the individual debt of one of the partners. In such a case the interest of a partner may be seized. *Marston & Co. v. Dewberry*, 518.
12. Partners have no cause of action against each other for a specific sum resulting from partnership transactions until there has been a settlement of the partnership. *Sewell, Ex., v. Cooper*, 582.
13. Two parties having formed a commercial partnership in a single transaction, and having by mutual consent made a partition between them, may enforce their respective claims against each other without bringing suit for a settlement of the partnership.

Jenkins v. Howard, 597.

14. The purchase of lands at the succession sale of the estate of their mother by the heirs, and their subsequently planting in partnership, does not constitute them partners in the lands.

Pecot v. Brothers, 667.

15. A partnership which has for its object the acquisition of real estate, must be in writing. *Ib.*
16. Where a commercial firm has obtained judgment against a debtor, the firm is afterwards dissolved by the death of two of the partners, and the survivor forms a new partnership with two other parties, and judgment is obtained against the new firm, on which execution issues, only the interest of the surviving partner in the judgment in favor of the old firm can be reached by seizure. The other interests in such judgment belong to the heirs or creditors of the deceased partners, and cannot be made liable for the debts of the new firm. *Degelos, Durrive & Co. v. Woolfolk*, 706.

17. The assets of a partnership, of which the deceased was a member, can not be made liable for the privileged claim of one thousand dollars, allowed by the statute of 1852 to the widow and heirs of the deceased partner, until the debts of the partnership are paid and a division of the assets are made between the partners. The decision in the succession of Cyrus W. Stauffer (*ante* page 520) reaffirmed. *Succession of Wellng*, 747.

PETITORY ACTION.

1. Plaintiff acquired title to a tract of land in the parish of East Feliciana, in 1849, and occupied it until 1862, when he left it in consequence of the operations of the war. In 1866 defendant entered upon it. In 1867 plaintiff brought a petitory action for the land, and to recover rents, etc. Defendant in possession set up title founded on a Spanish grant, and a probate sale, made in 1831, of

PETITORY ACTION—*Continued.*

a tract of land of seven hundred and twenty acres, alleging that the tract in controversy was included within that tract. The evidence shows that plaintiff proposed to buy defendant's claim, and that defendant refused to sell, but notified plaintiff that suit would be brought for the land. Suit never was brought. Under this state of facts, it was held by the court, that defendant not having shown a better title than plaintiff, that the proposition to buy defendant's claim never having been accepted, nor any suit brought as threatened, was not a recognition of the claim, and that plaintiff must recover. *Ernst v. Montigudo*, 169.

PLEADINGS.

1. A general denial and plea to the merits admits the capacity of plaintiff. *Silvernagle & Co. v. Fluker*, 188.
2. Where plaintiff claims in a representative capacity created by law, such as curator or executor, the want of authority must be specially pleaded in *limine litis*, in order to put the party on the proof of his capacity. *Ib.*
3. An amended petition substituting a new party plaintiff on allegations of ownership, in direct conflict with the original petition, will not be allowed, nor will an amendment be allowed showing that the notes sued upon were transferred after suit was commenced and a reconventional demand was filed. *Duncan v. Helm*, 303.
4. A brought suit against B on a promissory note for \$590 before the trial. A filed a supplemental petition, alleging a statement of account between A and B, which he makes a part of the supplemental petition, and alleges that C, a third party, binds himself as surety of B on the indebtedness, as shown by the statement. The agreement was offered in evidence on the trial by A, and showed an indebtedness of \$371, for which C became security. Held—That C was only bound as security for the amount shown to be due by the statement, and A having alleged that the agreement more fully shows the state of the case at the time the supplemental petition was filed, and having offered it in evidence on the trial, he was not entitled to recover more than the agreement showed to be due from B. *Cincinnati Insurance Co. v. Hite*, 379.
5. Where there is no answer to an amended petition containing matters of substance, nor default taken, all subsequent proceedings are irregular and will be set aside on appeal, and the cause remanded to be proceeded with according to law. *Brown v. Brown*, 461.
6. A peremptory exception that the petition discloses no cause of action admits, for the purposes of the exception, that all the allegations in the petition are true; and when from the allegations in

PLEADINGS—*Continued.*

the petition, if true, the court will be enabled to pronounce judgment thereon, the exception will be overruled.

Hastings v. Brantley, 516.

7. A peremptory exception that the petition discloses no ground of action, admits, for the purposes of the trial of the exception, that all the allegations in the petition are true, and no amount of evidence can have any influence in determining the question raised by the exception.

Bouligny v. Gary, 642.

8. Citation served on a party whose native language is French, when the petition is only written in English, will interrupt prescription.

Leon v. Bouillet, 651.

9. The exception that the petition is only written in the English language, when the mother tongue of the defendant is French, must be pleaded in *limine litis*.

Ib.

10. A party holding a mortgage entitling him to executory process to enforce it, may proceed *via ordinaria* against the mortgagee, either in the parish of his domicile and residence, or in the parish where the mortgaged property is situated.

Generes v. Simon, 653.

11. All petitions addressed to courts are required to be written in the English language, but where a portion of a petition, not essential, and without which the cause of action would still remain, is written in the French language, the petition will not be dismissed because it is not entirely written in the English language.

Ib.

12. The dative tutor, as mortgagee for the minors, without reference to the amount, may demand as against the ordinary creditors, that the property be sold for cash or part cash.

Deblanc v. Gary, 689.

13. A peremptory exception that the petition discloses no cause of action, admits for the purpose of its consideration, all the allegations in the petition to be true.

Ib.

14. All the parties to the suit must be made parties in an action to annul the judgment.

Haggerty v. Phillips, 729.

PLEDGE OR PAWN.

1. A certificate of stock of a corporation and banking company, pledged by the owner to the company to secure the payment of a note and mortgage to the bank for money loaned, operates as a standing acknowledgment of the debt, and prescription does not run against the note while the stock is pledged.

Citizens' Bank v. Johnson, 128.

2. A bank taking a note before maturity as collateral security for money loaned, becomes the holder in good faith for a valuable consideration.

La. State Bank v. Gaiennie, 555.

3. The pledgee of a promissory note payable to the drawer's own order, and by him indorsed in blank, may sue and recover on the note without the indorsement of the pledger.

Ib.

POLICE JURIES.

1. The police jury of the parish of Caddo has the right to establish as many ferries across the Red river or other water courses, and outside the corporation of Shreveport, and within the limits of the parish, as the public convenience may require.
O'Neill v. Police Jury, 586.
2. Warrants for money drawn by the police jury on the parish are prescribed by the lapse of five years from the time they become due.
Perry v. Parish of Vermilion, 645.

PRACTICE.

1. A motion to dismiss an appeal for reasons that are purely technical, such as informalities in the citation and service of appeal, must be made within three judicial days from the filing of the transcript.
Dumonchel, Tutrix, v. Lemerick, 30.
2. A promise to pay, subsequent to the maturity of the obligation, may be set up by an amended petition. *Ledoux v. Buhler*, 130.
3. Where the certificate of the clerk shows that the record contains all the testimony adduced, documents filed and proceedings had, the appeal will not be dismissed because there is no bill of exceptions, statement of facts or assignment of errors. 20 An. 513; C. P. 601, 602.
State Bank v. Cammack, 133.
4. The plea of prescription will be noticed when made for the first time in the Supreme Court. *Ib.*
5. Where an important document, such as a mortgage, has been inadvertently omitted from the record, the Supreme Court will, in the exercise of a sound legal discretion, remand the case, in order that both parties may have an opportunity to establish their rights.
Smith & Co. v. Morrison, 135.
6. The filing of an answer by defendant, and trial on the merits, does not waive his right to nor preclude the judge *a quo* from considering and deciding a peremptory exception (filed at the same time with the answer) founded on law.
Fletcher v. Dunbar & Co., 150.
7. The exception that the petition discloses no cause of action, will be sustained in a case where, if all the allegations are true, no judgment can be pronounced thereon. *Ib.*
8. A motion to dissolve an injunction on the face of the papers may be made after issue joined; in trying which, all the allegations of the petition are taken as true. *Butman v. Forshay*, 165.
9. An execution cannot be enjoined on grounds that might have been pleaded before judgment. *Ib.*
10. Where a party plaintiff to a suit gets married while the suit is pending, the supplemental petition, making her husband a party, need not be served on the defendant. *Flynn v. Flynn*, 168.
11. Where the plea of prescription is filed for the first time in the appellate court, and the record discloses a state of facts which, if

PRACTICE—Continued.

true, would defeat the plea, the case will be remanded for the purpose of admitting proof of the interruption of prescription.

Roddy, Adm., v. Robertson and Edwards, 191.

12. The plea of prescription may be made in the Supreme Court, and and when the record shows that the obligation sued upon is prescribed, the plea will be maintained.

Nelson & Co. v. Scott, 203.

13. Where mortgage creditors claim the proceeds of the sale of mortgage property made under a judgment, they cannot be permitted to allege the extinction of the judgment, and the consequent nullity of the sale under which the proceeds were realized.

Peychaud v. Citizens' Bank, 262.

14. To avoid the examinations of issues improperly raised by the answer, the more regular practice is to object to the introduction of testimony to sustain them.

Schneider & Zuberbier v. Dreyfus, 271.

15. Where a steamboat is sequestered in a suit against the owners, and released on their giving bond conditioned that they will not make any improper use of the property, and that they will faithfully present it after definitive judgment, the judgment creditor, after a final judgment has been rendered against the boat and owners, may proceed directly on the bond, without observing the formalities of issuing execution against the owners and having it returned *nulla bona*.

Noble & Kaiser v. Warner, 284.

16. The plea of general denial only admits the signature on the face of the note. An agreement on the back of the note, signed by the maker, does not form a part of it, and is not admitted by the general denial.

Boulin v. Rainey, 335.

17. Irregularities in the proceedings of the probate court ordering the execution of a will, and the relative nullities of the titles to property cannot be inquired into collaterally.

Armstrong v. Davis, 419.

18. A party cannot make an appearance by rule to set aside a judgment by default on the ground that the proceeding against him was informal and contrary to law, and, at the same time, urge the exception of want of citation.

New Orleans v. Hall, 438.

19. Alleged errors in the assessment roll must be proved, and it must be shown that the party complaining has in vain endeavored to have them corrected in the manner prescribed by law.

Ib.

20. Receipts, bearing date prior to the settlement of the parties by note, cannot be pleaded as a demand in compensation and reconvention against the note.

Levy & Co. v. Carter, 459.

21. A promissory note of a third party, due the defendant, cannot be set up in compensation against a demand of the plaintiff on the note of the defendant.

Ib.

PRACTICE—Continued.

22. A party cannot claim the nullity of a judicial sale and the fruits of the sale in one and the same action.
Tarleton, Whiting & Tullis v. Kennedy, 500.
23. A peremptory exception may be pleaded as well after default as before. *Ib.*
24. The allegation of a married woman in her petition that she is "joined and authorized" by her husband, is not sufficient authority to enable her to prosecute the suit.
Succession of Pomeroy, 576.
25. The allegations in a petition for injunction against an order of seizure and sale show that the consideration of the debt for which the mortgage was given was Confederate notes, and that petitioner is the surviving partner of her deceased husband, and, as such, is entitled to one thousand dollars out of his estate by preference. Held—That the petition disclosed an interest in preventing the payment of this illegal debt, and therefore disclosed a cause of action.
Richard v. Beauchamp, 635.
26. A bill of exceptions to the rejection of evidence by the judge must state the grounds on which it was rejected. *Ib.*
27. The objection, that the petition does not state the full name and residence of the plaintiff, must be made in *limine litis* by dilatory exception.
Taylor v. Littell, 665.
28. The objection that the plaintiff was not properly authorized to prosecute the action, must be pleaded specially in the court below. *Ib.*
29. A judgment that has been rendered without a judgment by default being first taken is illegal and null. *Ib.*
30. Where a final judgment has been rendered on default, and appeal taken therefrom, the cause will not be remanded on the allegation, without evidence, that the consideration of the note sued on was the price of a slave. *Ib.*
31. Where suit is brought by a judgment creditor against third parties to annul a sale, and a *datien en paiement* of property made by the judgment debtor to them, and they have not been made parties to the original suit, they may controvert the demand, although it be liquidated by a judgment, in the same manner that the original debtor might have done before judgment, and if the account on which the judgment is founded is prescribed, the plea will prevail as to them notwithstanding the judgment.
Pecot v. Brothers, 667.
32. H. C. Petty and the heirs of Wilder held property in common, on which a mortgage existed in favor of the Citizens' Bank. The heirs brought suit and obtained a partition in kind, which was executed before a notary public. The heirs then, through their tutrix, having obtained the consent of the bank, moved for a

PRACTICE—Continued.

division of the encumbrance, and obtained the permission to sign the necessary stock note in favor of the bank. The tutrix afterwards refused to sign the note. Held—That she was properly compelled by judgment, on rule, to sign the note, and that evidence was inadmissible, on trial of the rule, to show the condition of a partnership which had existed between their ancestor, Wilder, and the defendant, Petty, of which Petty was liquidator.
Heirs of Wilder v. Petty, 709.

SEE APPEAL—*Burke & Co. v. Edey & Pinckard*, 749.

PRE-EMPTION.

1. A party cannot attack, in the courts, the claim of a pre-emptor, without showing a prior equitable right to the land. A possessor in good faith on eviction, is entitled to recover the amounts expended by him in useful improvements made on the land.

Mumford v. McKinney, 547.

PRESCRIPTION.

1. Where a promissory note has been suffered to prescribe on its face, and no sufficient showing is made by the holder that prescription has been interrupted, the plea will be maintained. 20 An. 131, 565.

Dumonchel, Tutrix, v. Lemerick, 30.

2. Prescription runs against all persons, except such as are included in some exception established by law. C. C. 3487. The existence of war is not among the exceptions established by law that will work an interruption or suspension of prescription.

Smith v. Stewart, 67.

3. The inability to sue will not avail against the plea of prescription, except in the cases specially excepted by law. C. C. 2512, 3488.

Ib.

4. The maxim *contra non valentem agere non currit prescriptio* has no application in our system of jurisprudence. *Ib.*

5. Where an obligation or note is prescribed and the holder shows nothing that will operate an interruption or suspension of prescription, the plea will prevail. 20 An. 131, 423, 565.

Mechanics' and Traders' Bank v. Sanders, 106.

6. When the holder of a promissory note has suffered it to prescribe in his hands, he can not invoke the maxim, *contra non valentem agere non currit prescriptio*, to relieve it from the effect of the plea of prescription.

Jackson v. Yoist, 108.

7. Each item charged in account as money paid out, or for services rendered, is prescribed in three years from its date.

Williams v. Gay, 110.

8. Where the plea of prescription is filed in the Supreme Court, and the record shows that the obligation on which the judgment of the lower court is founded is prescribed, and the appellee does not ask that the case be remanded to enable the holder to show an interruption, the plea will be maintained in the Supreme Court.

Long v. Heirs of Scott, 120.

PRESCRIPTION—*Continued.*

9. The plea of prescription will not be defeated for any cause not mentioned in the exceptions established by law.
Bartley, Johnson & Co. v. Heirs of Bosworth, 126.
10. The maxim *contra non valentem agere non currit prescriptio* forms no part of our written law, and can not be invoked to defeat the plea of prescription. *Smith v. Stewart*, 67. *Ib.*
11. Notice of seizure and demand are necessary to interrupt prescription in a proceeding by executory process.
Mann & Co. v. Norton, 155.
12. When the notice has not been served until after prescription has accrued, the plea will be maintained. 20 An. 192. *Ib.*
13. A verbal promise to pay a promissory note will interrupt prescription, if made before prescription is acquired.
Silvernagle & Co. v. Fluker, 188.
14. A verbal promise to pay a promissory note before prescription has accrued, not denied when interrogated on facts and articles, will defeat the plea of prescription. *Harrell, Tutrix, v. White*, 195.
15. Prescription may be pleaded in the Supreme Court, and when no application is made to have the case remanded to show an interruption, the plea will be maintained, if the documents declared upon are prescribed on their face. *Roth v. Hebert*, 238.
16. Where more than five years have elapsed after the maturity of a promissory note, before suit is brought, and no interruption or renunciation is shown, the plea will prevail. C. C. 3505; 2 An. 131, 565.
Silvernagle & Co. v. East, 261.
17. Where a promissory note is prescribed on its face, and no interruption is shown, the plea will prevail. 20 An. 131, 565.
Peet, Simms & Co. v. Jackson, 267.
18. Where an open account is prescribed on its face, and the evidence fails to establish an interruption, the plea will prevail.
Boyle & Co. v. Kittredge & Ewing, 273.
19. Where a promissory note is prescribed on its face, and no interruption is shown, the plea will prevail. *Rabel v. Pourciau*, 20 An. 131.
Bank of Kentucky v. East, 275.
20. The burden of showing a renunciation of prescription of a promissory note after it has accrued falls upon the holder.
Offut v. Chapman and McKown, 293.
21. An indorsement of a payment on the note after it is prescribed is not sufficient to interrupt prescription. *Ib.*
22. The parol testimony of the holder of a promissory note is not admissible to establish the interruption of prescription. *Ib.*
23. Prescription must be pleaded expressly and specially in order that the party against whom it is urged may have full notice to meet it. C. C. 3426, 3427. *Mansfield, Norton, Assignee, v. Doherty*, 395.
24. The items in the account of an agent are not prescribed by the

PRESCRIPTION—*Continued.*

- lapse of three years from their date. Such claims are not embraced in the terms "open accounts" which by the statute of 1852 are prescribed against in three years; ten years is the only prescription against such a demand. *Dolhonde, Adm., v. Laurans*, 406.
25. The payment of interest on a promissory note up to a particular date, and an extension of the time of the payment of the principal to that date, will interrupt prescription.
Marcelin v. His Creditors, 423.
26. The prescription of one year cannot be invoked by a party holding under a void title.
Warfield v. Bobo, 466.
27. The burden of proof is on the plaintiff to show an interruption where the note sued on is prescribed on its face, and if none is shown the plea will be maintained.
McStea v. Boyd & Blanks, 501.
28. A payment on a promissory note, before prescription has accrued, by a third party, who has assumed the note in a notarial act, will interrupt prescription, which only begins to run again from the date of such payment.
Cockfield v. Farley, 521.
29. All informalities that occur in connection with the probate proceedings for the sale of land are prescribed by the lapse of five years from the date of the sale.
Pasiana v. Powell, 584.
30. The law makes no distinction, in regard to prescription, between negotiable and non-negotiable promissory notes and bills of exchange.
Robichaud v. Thorne, 611.
31. An order of seizure and sale granted on notes that were prescribed at the date of the order, will be set aside on appeal.
Taylor v. Hill, 626.
32. The maxim, *contra non valentem agere non currit prescriptio*, can not be invoked by the holder of a promissory note to defeat the plea of prescription. *Ib.*
33. Citation served on a party whose native language is French, when the petition is only written in English, will interrupt prescription
Leon v. Bouillet, 651.
34. An open account for moneys paid on a judgment, for materials, labor and carpenter work done, and improvements in repairs and improvements on the premises, is prescribed by three years.
French v. Riggs, 657.
35. Charges for board, lodging, and support of another are prescribed by one year. *Ib.*
36. A written agreement to pay a certain amount of money to another, styled a bond, falls under the class or denomination of promissory notes, and is prescribed by the lapse of five years from maturity.
Succession of Voorhies, 659.
37. A payment made by a security will not interrupt prescription as to the principal debtor, *Ib.*

PRESCRIPTION—*Continued.*

38. An account stated and closed by the written acknowledgment of the other party, is only prescribed by ten years. 14 An. 654; 20 An. 116. *Blanchin & Giraud v. Pickett*, 680.
39. The prescription of five years cannot be invoked in a case where judgment has been rendered on the note, and execution and garnishment process has issued, and judgment against the garnishee has been rendered, from which an appeal has been taken by the original judgment debtor. In such a case the note becomes merged in the judgment, and five years prescription does not apply. *Guillory v. Deville*, 686.
40. A suit to recover on a contract of agency is prescribed by ten years. *Poindexter and Pollard v. King*, 697.
41. A verbal promise to pay a promissory note after prescription has accrued, will not work an interruption of prescription. To establish the interruption, the evidence must show that the promise was made before prescription was acquired. *Megibben & Brother v. Willson*, 748.
42. After a note is prescribed, only written evidence is admissible to prove a renunciation. *Ib.*
 SEE APPEAL—*La. State Bank v. Cammack*, 133.
 SEE BILLS AND PROM. NOTES—*Bank of La. v. Williams*, 121.
 SEE EXEC. AND ADMINIS.—*Sevier v. Suc. of Gordon*, 373.
 SEE POLICE JURIES—*Perry v. Parish of Vermilion*, 645.

PRIVILEGE.

1. The privilege of the consignee, who has made advances on the goods or property in his possession through his agent is superior to that of the attaching creditor. *Maxen & Shearer v. Landrum*, 366.
2. Where a carrier of freight for hire stores the property or goods in a warehouse at the port of destination, the charges of the warehouse keeper for storage forms a privilege on the goods superior in rank to that of the carrier for the freight. *Powers & Co. v. Sixty Tons of Marble*, 402.
3. A merchant has a privilege on the crop for the necessary supplies furnished to make it. Act of 1843, amending article 3184 of the Civil Code. *Wood, Adm'r v. Calloway*, 471.
4. No privilege is allowed on the crop for money advanced to the planter. *Ib.*
5. The privilege of the vendor who has delivered personal property is inferior to that of a lessor. *Succession of Gayle*, 487.
6. No privilege exists on movables for the payment of State and parish taxes. *Ib.*
7. Where the fund produced by the sale of the movables of a succession has been exhausted by the special privileges, the immovables,

PRIVILEGE—*Continued.*

or such portion as may be necessary, must be sold to pay the general privileges, to which time the settlement of the rank of the general privilege creditors must be postponed. *Ib.*

8. A factor or merchant has no privilege on the mules, cattle and implements attached to the plantation, or on the proceeds of the sale thereof, for advances made or supplies furnished to make the crop, nor has the factor any privilege for money advanced to the planter who afterwards applied it to the payment of the laborers for working the crop. By giving the fund this direction by the planter and applying it to the settlement of privilege accounts, the factor does not become subrogated to the privilege. The privilege of the factor does not result from subrogation, but springs directly from the law which gives it.

Howe v. Whited & Gibbs, 495.

9. The factor has a privilege on the crop for advances made, and supplies furnished in aid of its production. *Ib.*
10. Where the land, immovables by destination, and the growing crop have been sold in block, the value of the crop may be ascertained by proof after the sale has been made, and the privilege of the factor attaches to the proceeds.
11. A factor having a privilege on a crop of cotton for supplies furnished, does not lose it by becoming the purchaser thereof at sheriff's sale. In such a case the privilege passes from the thing and attaches to the proceeds. *Ib.*
12. The privilege of the merchant for supplies furnished the planter is equal in rank with that of the lessor. *Masson v. Murray*, 535.

PROHIBITION.

1. Under the rules laid down in the Code of Practice, the Supreme Court of Louisiana will not take general superintending control over the inferior jurisdictions. 3 M. 42; 2 La. 88; 19 La. 498; 8 An. 92. The writ of prohibition, the power to grant which is specially allowed by the Code of Practice to appellate courts of competent jurisdiction, is not a writ of right, and is within the sound discretion of the tribunal to which the application is made.

State, ex rel. D'Meza v. Judge Fourth District Court, 123.

2. The writ of prohibition will not be granted by the Supreme Court of Louisiana against a tribunal of inferior jurisdiction, unless it be in cases where its intervention is necessary for the maintenance of its appellate jurisdiction. *Ib.*
3. Where the evidence shows that the security on the appeal bond is not good and solvent, as required by law, the Supreme Court will not issue a writ of prohibition restraining the judge *a quo* from ordering execution to issue pending the appeal.

State, ex rel. Simonds v. Judge Seventh District Court, 178.

PROHIBITION—*Continued.*

4. The Supreme Court will examine into the sufficiency of the surety on an appeal bond on application for a writ of prohibition, and if the surety is found to be good, the prohibition will issue restraining the judge from executing the judgment until the appeal is decided. *State ex rel. Storrs v. Judge Fourth District Court*, 735.

SEE APPEAL—*State, ex rel. Johnson v. Judge of Fifth District Court*, 113.

PROMISSORY NOTES.

SEE BILLS AND PROMISSORY NOTES.

PUBLIC DOMAIN.

1. A survey under the Spanish Government, when Louisiana was a province of that kingdom, not made in conformity with the forms and requirement of the order, and never approved or confirmed by the Spanish authorities, is merely an inchoate title. The land embraced by such survey passed by the treaty of cession to the United States as part of the public domain, the title to which vested in the new sovereign. *Arceneaux v. Benoit*, 673.
2. Where a party having such inchoate title, with partial confirmation by the United States Government, and in order to obtain a further concession under his claim, enters into an agreement with contiguous proprietors by which they renounce their right to back concessions under the acts of Congress of 1811 and 1826, and he recognizes the full extent of their claims, he is estopped thereby, in an adjustment of boundary, from claiming limits which would conflict with those of the other party, under the pretense that his claim, under the original order of survey, has been fully confirmed by the United States. *Ib.*
3. The action of boundary cannot be prescribed against. Civil Code, article 821. *Ib.*

RES JUDICATA.

1. Where an appeal has been dismissed on the ground that all the parties interested in the judgment were not made parties to the appeal, and the same questions involved in the first judgment appealed from are again passed upon before the District Court, between the same parties in a judgment of homologation, and more than one year having elapsed from the rendition of the first judgment, it must be considered *res judicata* from which no appeal will lie. *Gay v. Marrienneaux*, 288.
2. In order to justify a court of justice in rejecting a demand as contrary to the authority of the thing adjudged, it is necessary that the thing demanded is the same as in the first suit, is founded on the same cause of action, and the contest is between the same parties, acting in the same qualities. To ascertain what is demanded in a particular suit resort must be had to the prayer of the petition. *Slocomb v. De Lizardi*, 355.

RES JUDICATA—Continued.

3. The plea of *res judicata* to a second suit will not be maintained, unless it is shown to be between the same parties and acting in the same qualities with that of the first, founded on the same cause of action and on the same demand; if either of these requisites is wanting the plea will be overruled. *Ib.*
4. The plea of *res judicata* will not be maintained unless the parties to the first judgment are the same as those of the second.

Degelos, Durrie & Co. v. Woolfolk, 706.

RIGHT OF WAY.

1. The right of expropriating a right of way over a neighbor's property cannot be allowed, except in cases of extreme necessity, and where a party can make a road or passage over his own lots to the public streets, he must be required to do so. C. C. 695.

Perry v. Webb, 247.

SALE.

1. The possibility that a purchaser may be compelled to bring a suit at law to gain possession of the thing purchased, does not constitute it a litigious right. *Kellar v. Blanchard, 33.*
2. Where a lot of cotton is sold by weight, delivery does not take place until the cotton is weighed. The sale is incomplete until actual delivery has taken place. The fact that the vendor subsequently sold and delivered the cotton to another party, is incompatible with delivery to the first vendee. *Duncan v. Holt & Co., 235.*
3. A written act of sale of real estate has no effect against third parties until it is recorded in the proper office, unless it is shown that the party affected by it had knowledge of its existence and contents. *Smith v. His Creditors, 241.*
4. Where a sale of personal property has been completed by delivery (although fraudulent), the judgment creditor of the vendor can not seize it in the hands of the purchaser until the sale is declared null by a revocatory action. The case is different in a simulation. *Schneider & Zuberbier v. Dreyfus, 271.*
5. A deposited a lot of jewelry with B to be raffled, and afterwards gave C, a creditor of his, an order on B for the jewelry or its proceeds. Held—That this order did not establish either a sale or *datien en paiement* of the jewelry, and that C cannot be considered as the owner. *Aguader v. Quish, 321.*
6. A purchased a lot of furniture at auction sale, and afterwards induced the auctioneer to make the bill of sale to B. B then executed a notarial act of loan of the furniture to A. The furniture was seized by the creditor of A, and B enjoined. Held—That A was the owner of the property, and the bill of sale from the auctioneer to B, and the notarial act of loan from B to A, were a mere sham, a simulation, to screen the property from the pursuit of the creditors of A. *Stewart v. Cohn, 349.*

SALE—Continued.

7. To enable a party to recover damages for a breach of contract of sale, he must show that a sale was actually made.
Glenn v. Ferguson, 385.
8. A lease for hire of a pair of horses and buggy, at a stipulated price per day, is not a sale. *Ib.*
9. In a sale of goods in New York to a merchant in New Orleans, by samples presented by an agent in New Orleans, to be delivered in New Orleans in quality equal to the samples presented, the sale is not complete until the goods are delivered, and they are at the risk of the seller until delivery takes place.
Maillard v. Max Nihoul, 412.
10. In a written contract of sale of a lot of one hundred bales of cotton between A and B, the following stipulations appear: *First*—A declares that he sells B one hundred bales of his cotton crop then on his plantation. *Second*—The cotton was to be delivered at Randleson's Landing, or at some other convenient point on the river. Suit is brought by B to enforce the performance of the contract, and a writ of sequestration issued, and a few bales of cotton on the plantation in the seed were sequestered by the sheriff; a *fi. fa.* was issued on a judgment in favor of the wife against A, and the same cotton was seized by the sheriff. *Held*—That as B had no privilege on the cotton, and the sale not being completed by delivery, the weighing and counting of the bales being essential to perfect the sale, the seizing creditor must hold the cotton as against the sequestration.
Abat & Cushman v. Atkinson, 414.
11. Where a party demands the rescission of a sale, he must, as a condition precedent, return, or offer to return, the consideration which he has received.
Latham v. Hicky, 425.
12. The precarious possession of personal property carries with it the presumption of simulation, C. C. 2456, 16 An. 5, but this presumption may be disputed by the vendee showing the reality of the sale.
Guice v. Sheriff Sanders, 463.
13. Where the evidence shows that the sale of personal property was real and bona fide the injunction will be perpetuated against the seizing creditor of the vendor. *Ib.*
14. A sale of a tract of land by one of three joint owners will bind the other two, or either of them, if it is shown that they or either of them were present at the sale and made no objection thereto, but on the contrary advised and urged the sale.
Crownover v. Randle, 469.
15. The sale of an undivided tract of land by one of the three joint owners is null as to the interest of the party who was not present at the time, and afterward refused to ratify the transaction. *Ib.*
16. A vendor cannot maintain an action to rescind a sale and retake the property conveyed without returning or tendering to the vendee the portion of the price which he has received.
Lee v. Taylor, 514.

SALE—*Continued.*

17. In a sale of land, slaves and movable property, after the date of the emancipation proclamation, where the evidence shows that a portion of the price has been paid, equal to the value of the land and movables, the law will impute the payment to the land and movables, and the balance of the price, being without consideration, cannot be enforced. *Haden v. Phillips and Foster*, 517.
18. The stipulation in a written contract of sale of a lot of cotton that "delivery is accepted," will dispense the vendor from further delivery, and place the property at the risk of the purchaser. *Dupleix v. Gallien*, 534.
19. A sale of immovables has no effect against third parties, until it is recorded in the proper office, in the parish where the property is situated. *Meyer & Brother v. Simpson, Sheriff*, 591.
20. The sale of the property of a minor by the tutor, for Confederate notes as the consideration, is an absolute nullity; and the minor may sue for and recover back his property, or its value, from the vendee after delivery. *White v. Nesbit*, 600.
21. A sold the contents of a coffeehouse to B and C, for which B and C gave each their notes for one-half of the price. B gave a mortgage to secure the whole debt on his own property, and afterwards, at the maturity of the notes, paid one of them, and made a payment of one-half of the amount of the other. C subsequently transferred his one-half interest in the coffeehouse to B, for a fixed price. A brings suit by executory process to recover the balance of the outstanding note; B enjoins on the grounds of extinction of the debt and mortgage. Held—That the transfer from C to B, of his one-half interest in the coffeehouse was not a *datien en paiement*, but a sale, and that the property mortgaged not being the same as that sold from one co-debtor to the other, the debt was not extinguished by confusion. *Bessan v. Moucheux*, 617.
22. The fact that a party owes more than his property will sell for, does not prevent him from selling, and a sale made under such circumstances will not be avoided unless fraud is shown. *Pecot v. Brothers*, 667.

SEE JUDICIAL SALES.

SEE SEIZURE AND SALE.

SEIZURE AND SALE.

1. A third party cannot hold personal property against a seizing creditor if he has permitted the property purchased to remain in the possession of the seized debtor. *D'Armand v. Sheriff*, 198.
2. A seizure and sale of property under a writ of *fi. fa.* was made on twelve months' credit, for which a twelve months' bond was given with approved security. At the maturity of the bond a *fi. fa.* was issued thereon against the principal and surety and prop-

SEIZURE AND SALE—*Continued.*

- erty seized and again sold on twelve months' credit, for which a second twelve months' bond was given with approved security. At the maturity of this second bond execution again issued against the principal and surety. Held—That the second bond was taken without any warrant or authority of law, and could not therefore be enforced in the summary manner provided by law for the execution of twelve months' bonds. That execution on the second bond would be stayed by injunction. *Wieck v. Babin*, 230.
3. An *ex parte* order of court directing the payment of money does not bind a party entitled to the proceeds of the sale of the property sold under execution, nor will it protect the sheriff, *Citizens' Bank v. Payne & Gilman*, 380.
 4. The sheriff cannot pay out funds in his hands derived from the sale of property under execution which is subject to conflicting claims, on his own authority. *Ib.*
 5. Where it is shown that the sheriff had knowledge of the superior mortgage claims to the funds in his hands arising from the sale of property under execution, and he pays over the funds to another claimant of inferior grade, he becomes personally and officially liable to the creditor of superior rank for the amount thus illegally paid. *Ib.*
 6. In a judicial sale of real estate, the petition, judgment, notice of judgment, seizure, and notice to appoint an appraiser, together with the sheriff's deed were shown in a suit to annul the sale. Held—That the title was sufficiently made out without showing the *fi. fa.* and the sheriff's return. *Coulson v. Wells*, 383.
 7. The property of the surety on the official bond of the sheriff can not be seized and sold under a judgment against the principal and surety, until that of the principal has been discussed. *Stinson v. Hill, Sheriff*, 560.
 8. Two parties claim the same piece of property from the same source of title, the one deriving his title by purchase at private sale, and the other by purchase at a judicial sale under a mortgage, the existence of which was known to the purchaser at private sale at the time, and the evidence shows that the description of the property at the forced sale is the same as that in the private sale. Held—That the purchaser at the forced sale cannot be defeated in his title at the suit of the claimant at private sale, on the ground of want of sufficient description of the property at the public sale. *Smith v. Logan*, 577.

SEQUESTRATION.

1. The military orders issued to the banks of New Orleans during the late war directing them to make a statement of such deposits as belonged to officers of the army of the Confederate States, and

SEQUESTRATION—*Continued.*

directing them to pay over to the proper officer of the Quartermaster's Department of the United States all moneys in their possession belonging to or showing upon their books to the credit of such persons, was an attempt on the part of the military authorities to sequester these funds.

Nelligan v. Citizens' Bank, 332.

2. A bank can not be relieved from paying a deposit to the proper owner on the ground that it has paid over the amount of the deposit in Confederate treasury notes to the Quartermaster of the United States army, under military orders, unless it is shown that the deposit was made in the bank in Confederate money with the knowledge of the depositor. *Ib.*
3. The sequestration and taking possession of Confederate treasury notes by the military authorities of the United States, which the banks of the city of New Orleans had given over as the deposits of officers engaged in the rebellion, did not amount to a sequestration by the United States of the credits of said parties, against the banks. *Ib.*
4. Confederate notes having been issued in violation of law, and against good morals and public policy, could not form the basis of a seizure or sequestration so as to exonerate the banks from liability to their depositors. *Ib.*

SHERIFFS AND DEPUTIES.

1. A sheriff may cause a deed to be made and attested by any of his legally qualified deputies, and when so made and attested it has the same validity as though it were made and attested by the sheriff. *Kellar v. Blanchard*, 38.
 2. Where it is shown that the sheriff had knowledge of the superior mortgage claims to the funds in his hands arising from the sale of property under execution, and he pays over the funds to another claimant of inferior grade, he becomes personally and officially liable to the creditor of superior rank for the amount thus illegally paid. *Citizens' Bank v. Payne & Gilman*, 380.
 3. The capacity of a sheriff, duly commissioned as such, can not be tested or inquired into by an injunction against a seizure made on a *fi. fa.* *Turner v. Hill and Durdin*, 543.
- SEE ATTORNEYS—*Rosenfield v. Adams Express Company*, 590.

SOVEREIGN POWER.

1. The act of the sovereign power in proclaiming the abolition of slavery throughout the United States annulled all contracts based on slavery, and article 128 of the State constitution did not affect such contracts by prohibiting the courts from enforcing them. *Dranguet v. Rost*, 538.
2. A promise made after emancipation, to pay a promissory note given for a slave, cannot be judicially enforced. Constitution art. 128. *Ib.*

SUBROGATION.

1. Where a third party pays a judgment to the attorney of the judgment creditor under a writ of *feri facias*, and takes an order of court where the judgment was rendered, on the motion of the attorney, subrogating him to all the rights of the judgment creditor in the judgment, he becomes legally subrogated thereto, and conventional subrogation takes place by the act of the attorney.
Nugent v. Potter, 746.

STOPPAGE IN TRANSITU.

1. The courts of Louisiana will recognize and enforce the right of stoppage in *transitu* arising from a sale of goods in New York to an insolvent residing in New Orleans.
Blum & Co. v. Marks, 268.
2. The transitus of the goods is not at an end while in the custody of the carrier, and before they have been delivered to the consignee.
Ib.
3. To entitle the vendor to have the goods stopped in *transitu* he must show that, at the time of the sale, he was ignorant of the insolvency of the vendee. The discovery of the insolvency before the delivery is sufficient to entitle the vendor to the exercise of the right, although the goods may have been attached by a creditor of the vendee.
Ib.

SUCCESSIONS.

1. In a suit by the holder of mortgage notes against the succession, and the heirs, who, it is alleged, have taken possession without settling up the estate, the record must show that the original maker of the notes is dead, and that the heirs are in possession of the property. In such a case, where citation has issued to the heirs, and judgment by default has been confirmed against them, and appeal taken therefrom, the case will be remanded to the lower court to be proceeded with according to law.
Britton & Co. v. Heirs of Scott, 112.
2. Where the legatee or his assignee has obtained possession of money and assets of the succession in violation of law, and the executor brings suit to recover the same for the benefit of the estate, the legatee cannot set up in defense that his possession was in payment of the legacy.
Morel, Testamentary Ex., v. Surgi, 184.
3. When an heir becomes the joint proprietor of mortgageable hereditary property, the mortgage resulting from the recording of a judgment against him attaches to his part or portion thereof, subject to the prior debts and mortgages of the succession. The enforcement of such mortgage is dependent upon the final settlement of the succession.
Succession of Turcad v. Ger, Adm., 253.
4. Where succession property has been sold at probate sale, the mortgage creditors may pursue the funds arising from the sale by way of third opposition to the account of the administrator, and have

SUCCESSIONS—*Continued.*

their mortgage rights recognized and enforced against the proceeds of the sale of the mortgaged property, the same as they could against the property itself before the sale. *Ib.*

5. Where a debt has been contracted against an estate for supplies furnished, bills paid, etc., by the commission merchant, and a partition of the estate is afterward made among the forced heirs without providing for the debt, suit may be brought by the creditor against the heirs, jointly at the domicile of the succession. The allegation in the petition that some of the heirs named reside in other parishes than that where the suit is brought will not give rise to the exception of domicile. *Lee v. Goodrich, Tutor, 278.*
6. In a contest between the heirs of their deceased mother and the surviving husband for a partition of the separate estate of the deceased, a declaration made in the act of sale of real property to the deceased mother that the purchase was made by the wife with funds derived from the income and revenue of her separate paraphernal estate is, as between the heirs of the wife and her husband, who signed the act, conclusive against him. *16 An. 270.*

Succession of Wade, 343.

7. Where an unmarried woman enters into an agreement in writing before a notary public for the purchase of real property, and makes a cash payment for a portion of the price, and executes her notes for the balance due at a future date, and she marries before the maturity of the notes, and the title is made in accordance with the agreement after the marriage takes place, the property thus acquired will, as between the husband and wife, form a part of her separate paraphernal estate. *Ib.*
8. If the succession be accepted with benefit of inventory, no part of it goes into the possession of the heirs as such until the estate shall have been administered, and until such administration the estate must remain under the authority of the Court of Probates, where it was opened. *Succession of DeRoffignac, 364.*

9. Real property situated in Louisiana, owned by a French subject, residing in France, cannot be administered in the courts of France; such property thus situated forms a separate succession from that in France, and must be administered according to the laws of Louisiana. *Ib.*
10. Heirs residing in France must be recognized as such by the courts of Louisiana before they can be put in possession of property situated in this State, which they have inherited from their ancestor in France. *Ib.*
11. The opening of a succession and the appointment of an administrator in a parish where the deceased never has resided, nor owns property therein at the time of the death, are absolute nullities; and any and all proceedings had and all judgments rendered against the succession are void. *Milttenberger v. Knox, 399.*

SUCCESSIONS—*Continued.*

12. Where the creditors of a succession are litigating their rights contradictorily with each other, and the value of the succession exceeds five hundred dollars, an appeal will lie to the Supreme Court, although the claim of each creditor may not amount to that sum.
Succession of Gale, 487.
13. The holder of a claim against a succession, approved by the administratrix, is not likened to the holder of a note payable to bearer, and he is not dispensed from proof of ownership when denied by other creditors.
Ib.
14. An heir, of age, by accepting the succession, purely and simply, becomes personally liable for the debts of the estate.
James v. Hynton and Sheriff, 566.
15. A creditor who permits the heir to take unconditional control of the estate, without causing it to be administered, loses the right to pursue the property of the succession, as distinct from that of the heir.
Ib.
16. A sole heir, having accepted the succession of her mother purely and simply, has the right to take possession of the property, and her husband, by administering it with her permission, does not become personally responsible for the debts of the succession.
Leon v. Bouillet, 651.
15. In 1861, before emancipation, a number of slaves were sold at probate sale, and purchased by the heirs. In 1867, after emancipation, the administrator filed his account debiting each one of the heirs with the amount of his purchase for slaves, which had not been paid into the succession, against which he opposed the amount of their respective inheritances, crediting or charging them with the difference, as the case might be. The heirs opposed the homologation of the account. Held—That under the settled jurisprudence of the State, the obligations contracted by the heirs in 1861, on account of their purchase of slaves, being null and void, could not be an element in either confusion or compensation; nor could that portion of the proceeds for the sale of slaves form a part of the assets of the estate, and that the administrator must account to the heirs for their portions, without taking into account the sale of slaves as assets, and without charging the heirs with the amount of their purchase for slaves.

Succession of Patin, 661.

SEE EXECUTORS AND ADMINISTRATORS.

SEE EXECUTORY PROCESS—*Randolph v. Chapman.*

TAXES AND TAX SALES.

1. The third section of the act of the Legislature of 1855, page 327, prohibiting Municipal Corporations within the State from levying any tax on persons engaged in selling articles manufactured by themselves within the State, is not in conflict with article 118 of the Constitution of 1868. A tax levied by the city of New Orleans on such persons is illegal.

New Orleans v. Lusse and Bhulman, 1.

TAXES AND TAX SALES—*Continued.*

2. A contract with the City of Jefferson for curbing and gutter built on the sidewalk within the corporation is not a tax, toll, or impost, within the meaning of article 74 of the Constitution of 1868.
Rooney v. Brown, 51.
3. The act of the Legislature, No. 114, approved on the twenty-ninth of September, 1868, levying a tax of one per cent. on the cash value of all the immovable and movable property in the State, according to the assessment rolls for the year 1867 (being the last assessment which at that time had been made), is not retrospective in its operations, and does not therefore conflict with article 110 of the Constitution of 1868.
Frellson v. Mahan, 79.
4. The selecting the assessment of 1867 (the last one then made), as a basis for a tax, levied in 1868, was a subject which was exclusively within the legislative control. The principle of equality and uniformity enunciated in article 118 of the Constitution of 1868, is not violated by selecting a previous assessment of the property taxed as a basis of estimate of the amount of taxes to be collected.
Ib.
5. A State tax collector is competent to sue for and recover in the name of the State any tax or license due by a tax payer.
State v. King, 201.
6. The act of the Legislature of 1865 imposing a license tax on attorneys at law is equal and uniform on all persons engaged in the practice of the profession, and is therefore not in conflict with article 124 of the Constitution of 1864, nor with article 118 of the Constitution of 1868.
Ib.
7. The State, having authorized the issuing of a license to a party to practice law, is not thereby precluded from taxing such party annually for pursuing the profession within the State.
Ib.
8. The penalties imposed on merchants for selling hay in the city of New Orleans without first having it inspected according to law is not a tax upon imports or upon the produce of other States of the Union brought here for sale, but is simply a protection to the public against the introduction of commodities that are unfit for commerce.
State v. Fosdick, 256.
9. The Constitution of the United States expressly permits the States to pass inspection laws.
Ib.
10. The city ordinance of the city of New Orleans for the year 1866, which declares that "every keeper of a warehouse where produce, goods, wares or merchandise are received on storage, one hundred dollars for each and every warehouse" was intended to impose a license tax of one hundred dollars upon the particular calling or business of keeping a warehouse, and not a tax upon the warehouse itself.
Hodgson v. New Orleans, 301.
11. Such a tax is uniform upon all persons engaged in that kind of business.
Ib.

TAXES AND TAX SALES—*Continued.*

12. The act of the Legislature of the sixteenth of March, 1866, No. 122, exempting certain property from taxation during the war, was annulled by article 149 of the Constitution of 1868.
Police Jury v. Heirs of Burthe, 325.
13. By the act of the Legislature of March 28, 1867, the assessment of taxes for the year 1860, and the consecutive years to 1864, inclusive, were extended until the first of January, 1870. Suits brought for the taxes on property for these years is therefore premature and must abate until the first of January, 1870. *Ib.*
14. The act of the Legislature of 1855, authorizing the imposition of a license tax of one thousand dollars on each insurer or insurance company not chartered by the State, and only imposes a license tax of five hundred dollars on each insurance company chartered by the laws of the State, is not in conflict with that provision of the Constitution which requires that taxation shall be equal and uniform. 10 An. 402.
State v. Foadick, 434.
15. State warrants drawn by the Auditor of Public Accounts are receivable in payment of taxes or licenses, and a party depositing them with the collector is exempt from the payment of interest, costs or damages from the date of such deposit. Act No. 1 of 1869.
State v. Cassard, 751.

TUTORS AND TUTORSHIP.

1. The tutrix, under an order of the court, filed a final account of her tutorship, which the under tutor opposed. The District Judge dismissed the account and ordered the tutrix to file another within fifteen days. Held—That the account first filed should have been amended and corrected, and homologated as thus amended. The under tutor is not responsible for the expenses of litigations with a tutrix in behalf of minors unless he act in bad faith. 19 An. 153.
Succession of Samuels, 15.
2. The acknowledgment and promise to pay by a tutrix in her individual capacity will not interrupt prescription as to the succession. 15 An 168.
Stowers v. Succession of Blackburn, 127.
3. A tutor is a competent witness to prove the correctness of his tutorship account. Acts of 1868, page 269.
Tutorship of the Minor, *Scott*, 187.
4. A tutor, in making up an account of his tutorship, when he has engaged in planting in partnership with another with the property under his control belonging to his ward, the plantation expenses must first be separated from the individual expenses, and, after deducting them from the proceeds of the crop, the balance must be proportionately divided, and the individual expenses chargeable to the minor must be deducted from his portion. *Ib.*
5. The holder of an obligation signed by the tutor cannot recover against the minor, unless he shows authority in the tutor to make it.
Carroll & Co. v. Doughty, Tutor, 374.

TUTORS AND TUTORSHIP—*Continued.*

6. An obligation signed by the tutor for supplies to carry on the plantation of his ward will not bind the minor, unless it is shown that he is authorized to carry it on for and on account of the minor, or that the advances made inured to his benefit. *Ib.*
7. A tutor residing in a foreign country or in another State of the Union cannot receive letters of tutorship from the courts of Louisiana, nor be recognized as testamentary executor without first giving bond and security under such conditions as are required by law from dative testamentary executors. Acts of 1842, sec. 5, page 302. *Succession of Young, 394.*
8. The surviving husband having qualified as natural tutor to his minor children, and caused an inventory of the community property to be made, and on that basis caused the one-half interest of the wife in the community to be adjudicated to him, for which he executed a special mortgage in favor of the heirs on his own property, and he dies, and a dative tutor is appointed to represent his minor children, the dative tutor, thus appointed, may vote at the deliberations of the creditors to dispose of the property of the deceased, an insolvent. *Deblanc, Tutor, v. Gray, 689.*
9. The dative tutor, as mortgagee to the minors, without reference to the amount, may demand, as against the ordinary creditors, that the property be sold for cash or part cash. *Ib.*
10. The executrix and tutrix, having interests in common with the major and minor heirs, are incompetent to represent the minors in a judicial partition. *Succession of Schuttler, 712.*
11. Proceedings in partition, where the tutrix has represented the minors without the advice of a family meeting, are null, and the purchaser of property at a sale made under such circumstances, cannot be compelled to pay the price bid. *Ib.*
12. The minor has a legal mortgage on the property of the tutor or tutrix to secure the faithful administration of his estate. *Hatcher v. Jackson, 737.*
13. Where the mother of the minor heirs contracts a second marriage without the consent of a family meeting, she loses the tutorship, but if she first obtains the consent and approval of a family meeting she retains the tutorship, and her second husband becomes the co-tutor to the minors by a former marriage. In such a case the property of the co-tutor is not under legal mortgage for the faithful administration of the tutorship. *Ib.*

WARRANTY.

1. The liquidating partner of a commercial firm cannot be called in warranty by the administrator on a demand against the estate of a deceased partner. *Succession of Dolhonde, 3.*

WARRANTY—Continued.

2. A sale of imported goods at the port of New Orleans in 1861 and 1862, while the city and State were under the control of the insurgents, did not impose on the vendor the obligation of warranty against eviction for the non-payment of duties to the United States. Under such circumstances, the purchaser is presumed to have contracted with reference to the fact that the duties had not been paid. *Snodgrass v. Adams*, 136.
3. Where a party in possession of immovable property by a gratuitous title is sought to be evicted, he cannot invoke the plea of prescription, nor call the donor in warranty. *Bister v. Menge*, 216.
4. Plaintiff had leased the bar on the steamboat T. D. Hine for one year from the agent of the owner. Before the expiration of the lease the boat was purchased by the captain (Worley), who forcibly ejected the lessee from the bar and put him off the boat. He brings suit against the former owner, the former master, and the present owner and master, to recover the damages he had sustained, alleging a conspiracy between these parties to gain possession of the bar. The last owner of the boat pleaded the exception of domicile, which was sustained by the court below, and the suit dismissed as to him. Held—That the warranty by the vendor only extended to eviction, and could not be extended by the court so as to cover a case of assault and battery; that a conspiracy not being established by the evidence, and the last vendor and present owner of the boat not being before the court in this suit, plaintiff's demand for damages in this suit must fail.

Jones v. Worley, 404.

WILLS.

1. The rule that testaments are more easily avoided than contracts, on the ground of mental unsoundness, does not refer to the amount of intellect required in a testator. So far as the latter is concerned, a will may be made by any mind which has the soundness and strength necessary to endure the conflict involved in the making of a bargain. *Chandler v. Barrett, Ex.*, 58.
2. Insanity is never presumed. *Ib.*
3. If a testament present a series of wise and judicious dispositions, the *onus* is upon the heirs who attack it to prove unsoundness of mind at the date of its execution. *Ib.*
4. If by facts occurring near the time of the date of the testament, and preceding and following it, the heirs have proved an habitual state of insanity, then, and notwithstanding the wisdom of the will, the *onus* would be shifted on the legatee to prove the sanity of the testator during the intermediate time, that is, at the date of the testament. *Ib.*
5. If, however, no habitual state of insanity is established, and the acts of folly are rare, and occur at periods distant from each other

WILLS—Continued.

and from the date of the testament, the testament, if not destitute of good sense on its face, will be presumed to be the offspring of a healthy volition and a lucid memory. *Ib.*

6. A nuncupative will by public act must bear upon its face the evidence that all the formalities required by law for its validity have been observed by the notary in drawing the testament.

Succession of Wilkin, 115.

7. A nuncupative will by public act is null, if it does not appear on its face that the witnesses were present at the time the testator was dictating it to the notary, and also when the notary read the instrument as written down by him, to the testator. *Ib.*

8. The formalities necessary to be observed to give validity to an olographic testament are, that the will must be written, dated and signed by the testator himself. *Succession of G. Ehrenberg, 280.*

9. A party may dispose of his property by last will, by instituting an heir, or by naming legatees.

10. Where the language of a testament leaves the meaning of the testator doubtful, acts done by him after its execution may be taken into consideration as explanatory of, and in ascertaining his intentions. *C. C. 1708.* *Ib.*

11. The declarations of the testator in his last will and testament are presumed to have been made with deliberation and reflection, and are entitled to due consideration, but they can not be permitted to outweigh his express acknowledgment in an authentic act.

Succession of Forsyth, 367.

12. The act by which a testamentary disposition is revoked must be made in one of the forms prescribed for testaments, and clothed with the same formalities. *Hollingshead v. Sturgis, Ex., 450.*

13. A nuncupative will by private act, not having been read by the testatrix to the witnesses, nor by one of them to the rest, in her presence, is invalid as a testament, and will not operate as a revocation of a valid will. *Ib.*

14. A letter written by the testator, posterior the date of the last will, not clothed with the formalities required for a testament, will not operate a revocation of the last will and testament of the deceased. *Ib.*

WITNESSES.

1. The State Engineer having made a contract in conformity with the act of 1857, page 162, for improving and draining Bayou Bourbieux, which lies in the parishes of West Baton Rouge and Iberville, is a competent witness to testify as to the performance of the work in accordance with the contract.

Grady v. Desobry, 132.

2. The fact that the engineer is required by the contract to make a report to the police jury of the completion of the work does not

WITNESSES—Continued.

disqualify him from testifying to other facts not embraced in his report. *Ib.*

3. The husband of his deceased wife is not a competent witness to testify in any suit, *against* the interest of her succession, to any fact which took place during her life time.

Succession of Wade, 343.

4. The testimony of a witness taken by commission will not be allowed to go the jury, if it contains nothing but hearsay evidence.

Poutz v. Jones, 726.

5. A witness on the stand will not be permitted to give opinions in answer to hypothetical questions. *Ib.*

6. The husband cannot be a witness for or against his wife in a litigation to which she is a party. Acts of 1867, page 269.

Willis v. Kern, 749.

